

1999

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-SIXTH LEGISLATURE
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DENNIS W. COOPER
Code Reviser

WASHINGTON SESSION LAWS
GENERAL INFORMATION

1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
- (i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by
 - (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained—price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.60 per set (\$20.00 plus \$1.60 for state and local sales tax at 8.0%). The permanent edition costs \$54.00 per set (\$25.00 per volume plus \$4.00 for state and local sales tax at 8.0%). All orders must be accompanied by payment.

2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

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

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

3. PARTIAL VETOES

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

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

5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 1999 regular session to be July 25, 1999 (midnight July 24th).
- (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 1999 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.



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CHAPTER 1

[Initiative 688]

STATE MINIMUM WAGE

AN ACT Relating to the state minimum wage; and amending RCW 49.46.020

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

Sec. 1. RCW 49.46.020 and 1993 c 309 s 1 are each amended to read as follows:

(1) Until January 1, 1999, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than four dollars and ninety cents per hour.

(2) Beginning January 1, 1999, and until January 1, 2000, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than five dollars and seventy cents per hour.

(3) Beginning January 1, 2000, and until January 1, 2001, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than six dollars and fifty cents per hour.

(4)(a) Beginning on January 1, 2001, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, 2000, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted minimum wage rate calculated under this subsection (4)(b) takes effect on the following January 1st.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years.

Originally filed in Office of Secretary of State January 27, 1998.

Approved by the People of the State of Washington in the General Election on November 3, 1998.

CHAPTER 2

[Initiative 692]

MEDICAL USE OF MARIJUANA

AN ACT Relating to the medical use of marijuana; adding a new chapter to Title 69 RCW; and prescribing penalties.

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

NEW SECTION: Sec. 1. TITLE.

This chapter may be known and cited as the Washington state medical use of marijuana act.

NEW SECTION. Sec. 2. PURPOSE AND INTENT.

The People of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The People find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, The people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as primary caregivers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial.

NEW SECTION. Sec. 3. NON-MEDICAL PURPOSES PROHIBITED.

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for non-medical purposes.

NEW SECTION. Sec. 4. PROTECTING PHYSICIANS AUTHORIZING THE USE OF MEDICAL MARIJUANA.

A physician licensed under chapter 18.71 RCW or chapter 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

1. Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

2. Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient.

NEW SECTION. Sec. 5. PROTECTING QUALIFYING PATIENTS AND PRIMARY CAREGIVERS.

1. If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.
2. The qualifying patient, if eighteen years of age or older, shall:
 - (a) Meet all criteria for status as a qualifying patient;
 - (b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty day supply; and
 - (c) Present his or her valid documentation to any law enforcement official who questions the patient regarding his or her medical use of marijuana.
3. The qualifying patient, if under eighteen years of age, shall comply with subsection (2)(a) and (c) of this section. However, any possession under subsection (2)(b) of this act, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.
4. The designated primary caregiver shall:
 - (a) Meet all criteria for status as a primary caregiver to a qualifying patient;
 - (b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty day supply;
 - (c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, to any law enforcement official requesting such information;
 - (d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and
 - (e) Be the primary caregiver to only one patient at any one time.

NEW SECTION. Sec. 6. DEFINITIONS.

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

1. "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.
2. "Primary caregiver" means a person who:
 - (a) Is eighteen years of age or older;
 - (b) Is responsible for the housing, health, or care of the patient;
 - (c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.
3. "Qualifying Patient" means a person who:
 - (a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;
 - (b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;
 - (c) Is a resident of the state of Washington at the time of such diagnosis;
 - (d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and
 - (e) Has been advised by that physician that they may benefit from the medical use of marijuana.
4. "Terminal or Debilitating Medical Condition" means:
 - (a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
 - (b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or
 - (c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or
 - (d) Any other medical condition duly approved by the Washington state medical quality assurance board as directed in this chapter.
5. "Valid Documentation" means:
 - (a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and
 - (b) Proof of Identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

NEW SECTION. Sec. 7. ADDITIONAL PROTECTIONS.

1. The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

2. No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.
3. The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient.

NEW SECTION. Sec. 8. RESTRICTIONS, AND LIMITATIONS REGARDING THE MEDICAL USE OF MARIJUANA.

1. It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.
2. Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.
3. Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.
4. Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or on any school grounds, or in any youth center.
5. It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under section 6(5)(a) of this act.
6. No person shall be entitled to claim the affirmative defense provided in Section 5 of this act for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway.

NEW SECTION. Sec. 9. ADDITION OF MEDICAL CONDITIONS.

The Washington state medical quality assurance board, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted by physicians or patients to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance board shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance board shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review.

NEW SECTION. Sec. 10. 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. 11. CAPTIONS NOT LAW.

Captions used in this chapter are not any part of the law.

NEW SECTION. Sec. 12.

Sections 1 through 11 of this act constitute a new chapter in Title 69 RCW.

Originally filed in Office of Secretary of State March 16, 1998.
Approved by the People of the State of Washington in the General Election
on November 3, 1998.

CHAPTER 3

[Initiative 200]

GOVERNMENT DISCRIMINATION OR PREFERENTIAL TREATMENT

AN ACT Relating to prohibiting government entities from discriminating or granting preferential treatment based on race, sex, color, ethnicity, or national origin; and adding new sections to chapter 49.60 RCW.

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

NEW SECTION. Sec. 1. (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after the effective date of this section.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(7) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.

(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington anti-discrimination law.

(9) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state

Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

NEW SECTION. Sec. 2. This act shall be known and cited as the Washington State Civil Rights Act.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act are each added to chapter 49.60 RCW.

Originally filed in Office of Secretary of State April 7, 1997.

Approved by the People of the State of Washington in the General Election on November 3, 1998.

CHAPTER 4

[Senate Bill 5004]

VALIDATION OF SCHOOL BOND ELECTIONS

AN ACT Relating to validation of school bond elections; amending RCW 29.27.080; and declaring an emergency.

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

Sec. 1. RCW 29.27.080 and 1984 c 106 s 12 are each amended to read as follows:

(1) Except as provided in RCW 29.81A.060, notice for any state, county, district, or municipal election, whether special or general, shall be given by at least one publication not more than ten nor less than three days prior to the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. Said legal notice shall contain the title of each office under the proper party designation, the names and addresses of all officers who have been nominated for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and that the election will be held in the regular polling places in each precinct, giving the address of each polling place: **PROVIDED,** That the names of all candidates for nonpartisan offices shall be published separately with designation of the offices for which they are candidates but without party designation. This shall be the only notice required for a state, county, district, or municipal general or special election and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements for the giving of notice of any general or special elections.

(2) All school district elections held on February 5, 1980, at which the number and proportion of persons required by law voted to authorize bonds or tax levies, are hereby validated regardless of any failure to publish notice of such election. No action challenging the validity of any such election may be brought later than April 15, 1980, or thirty days from June 12, 1980, whichever is later. Notice of provisions of this subsection shall be published within five days after February 28, 1980, in a newspaper of general circulation within each county where a school

district election was held on February 5, 1980, and where notice of such election was not published as provided in subsection (1) of this section.

(3) All school district elections held on May 19, 1998, at which the number and proportion of persons required by law voted to authorize bonds or tax levies, are hereby validated regardless of any failure to publish notice of such election. No action challenging the validity of any such election may be brought later than thirty days after the effective date of this section. Notice of provisions of this subsection shall be published within five days after the effective date of this section, in a newspaper of general circulation within each county where a school district election was held on May 19, 1998, and where notice of such election was not published as provided in subsection (1) of this section.

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

Passed the Senate January 20, 1999.

Passed the House January 27, 1999.

Approved by the Governor January 29, 1999.

Filed in Office of Secretary of State January 29, 1999.

CHAPTER 5

[Substitute House Bill 1124]

ELECTRONIC MONITORING OF ALCOHOL VIOLATORS

AN ACT Relating to correcting electronic monitoring provisions in the penalty schedule for alcohol violators; reenacting and amending RCW 46.61.5055; and declaring an emergency.

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

Sec. 1. RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court

may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; and

(iv) By a court-ordered restriction under RCW 46.20.720.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and

(iv) By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court

shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of nine hundred days. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and

(iv) By a court-ordered restriction under RCW 46.20.720.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and

(iv) By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and

(iv) By a court-ordered restriction under RCW 46.20.720.

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether the person was driving or in physical control of a vehicle with one or more passengers at the time of the offense.

(5) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(6) After expiration of any period of suspension or revocation of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include:

(i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(8) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(9) For purposes of this section:

(a) (~~("Electronic home monitoring" shall not be considered confinement as defined in RCW 9.94A.030;~~

~~(b))~~) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of ~~((b))~~ (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

~~((e))~~ (b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense.

NEW SECTION. Sec. 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House February 22, 1999.

Passed the Senate March 4, 1999.

Approved by the Governor March 16, 1999.

Filed in Office of Secretary of State March 16, 1999.

CHAPTER 6

[Substitute House Bill 1294]

TECHNICAL EDITING OF DRIVER'S LICENSE STATUTES

AN ACT Relating to technical editing of statutes in chapter 46.20 RCW; amending RCW 46.20.015, 46.20.025, 46.20.031, 46.20.035, 46.20.041, 46.20.045, 46.20.055, 46.20.070, 46.20.091, 46.20.095, 46.20.100, 46.20.114, 46.20.117, 46.20.120, 46.20.130, 46.20.157, 46.20.161, 46.20.181, 46.20.205, 46.20.510, and 46.64.070; reenacting and amending RCW 46.20.021; adding a new section to chapter 46.04 RCW; adding new sections to chapter 46.20 RCW; creating a new section; recodifying RCW 46.20.190, 46.20.336, 46.20.550, 46.20.343, 46.20.470, 46.20.414, and 46.20.430; repealing RCW 46.20.106 and 46.20.116; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** (1) This act is intended to edit some of the statutes relating to driver's licenses in order to make those statutes more comprehensible to the citizenry of the state of Washington. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 46.20 RCW or other statutory provisions or rules adopted under those provisions.

(2) This act is technical in nature and does not terminate or in any way modify any rights, proceedings, or liabilities, civil or criminal, that exist on the effective date of this act.

NEW SECTION. **Sec. 2.** A new section is added to chapter 46.04 RCW to read as follows:

"Driving privilege withheld" means that the department has revoked, suspended, or denied a person's Washington state driver's license, permit to drive, driving privilege, or nonresident driving privilege.

NEW SECTION. **Sec. 3.** A new section is added to chapter 46.20 RCW to read as follows:

(1) No person may drive a motor vehicle upon a highway in this state without first obtaining a valid driver's license issued to Washington residents under this chapter. The only exceptions to this requirement are those expressly allowed by RCW 46.20.025.

(2) A person licensed as a driver under this chapter:

(a) May exercise the privilege upon all highways in this state;

(b) May not be required by a political subdivision to obtain any other license to exercise the privilege; and

(c) May not have more than one valid driver's license at any time.

Sec. 4. RCW 46.20.015 and 1997 c 66 s 2 are each amended to read as follows:

(1) Except as expressly exempted by this chapter, it is a traffic infraction and not a misdemeanor under RCW 46.20.005 ~~((for))~~ **if** a person ~~((to))~~;

(a) Drives any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter in his or her possession ~~((if the person))~~;

(b) Provides the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop; and ~~((the person))~~

(c) Is not driving while suspended or revoked in violation of RCW 46.20.342(1) or 46.20.420.

(2) A ~~((violation of))~~ person who violates this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she obtained a valid license after being cited, the court shall reduce the penalty to fifty dollars.

Sec. 5. RCW 46.20.021 and 1997 c 66 s 3 and 1997 c 59 s 8 are each reenacted and amended to read as follows:

(1) New Washington residents must obtain a valid Washington driver's license within thirty days from the date they become residents.

(2) To qualify for a Washington driver's license, a person must surrender to the department all valid driver's licenses that any other jurisdiction has issued to him or her. The department must invalidate the surrendered photograph license and may return it to the person.

(a) The invalidated license, along with a valid temporary Washington driver's license provided for in section 12 of this act, is proper identification.

(b) The department shall notify the previous issuing department that the licensee is now licensed in a new jurisdiction.

(3) For the purposes of obtaining a valid driver's license, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

(a) Becoming a registered voter in this state; or

(b) Receiving benefits under one of the Washington public assistance programs; or

(c) Declaring ~~((that he or she is a resident))~~ residency for the purpose of obtaining a state license or tuition fees at resident rates.

~~((2) The term)) (4)(a) "Washington public assistance programs" ((referred to in subsection (1)(b) of this section includes only)) means public assistance programs ((for which)) that receive more than fifty percent of the combined costs of benefits and administration ~~((are paid))~~ from state funds. ~~((Programs which are not included within the term))~~~~

(b) "Washington public assistance programs" ~~((pursuant to the above criteria include, but are not limited to))~~ does not include:

(i) The Food Stamp program under the federal Food Stamp Act of 1964;

(ii) Programs under the Child Nutrition Act of 1966, 42 U.S.C. Secs. 1771 through 1788; ~~((and))~~

(iii) Temporary Assistance for Needy Families; and

(iv) Any other program that does not meet the criteria of (a) of this subsection.

~~((3) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession~~

issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing department that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

~~—(4) New Washington residents are allowed thirty days from the date they become residents as defined in this section to procure a valid Washington driver's license:~~

~~—(5) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations.))~~

Sec. 6. RCW 46.20.025 and 1993 c 148 s 1 are each amended to read as follows:

The following persons ~~((are exempt from license hereunder))~~ may operate a motor vehicle on a Washington highway without a valid Washington driver's license:

(1) ~~((Any person in the service))~~ A member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard ((of the United States)), or in the service of the National Guard of this state or any other state, ((when furnished with a driver's license by such service when operating)) if licensed by the military to operate an official motor vehicle in such service;

(2) A nonresident driver who is at least;

(a) Sixteen years of age and ((who)) has ((in his or her)) immediate possession of a valid driver's license issued to ((him or her in)) the driver by his or her home state; or ((is at least))

(b) Fifteen years of age with;

(i) A valid instruction permit issued to ((him or her in)) the driver by his or her home state((;)) and ((when accompanied by))

(ii) A licensed driver who has had at least five years of driving experience ((and is)) occupying a seat beside the driver; or

~~((3) A nonresident who is at least)~~ (c) Sixteen years of age and ((who)) has ((in his or her)) immediate possession of a valid driver's license issued to ((him or her in)) the driver by his or her home country. A nonresident driver may operate a motor vehicle in this state under this subsection (2)(c) for ((a period not to exceed)) up to one year;

(4) Any person operating special highway construction equipment as defined in RCW 46.16.010;

(5) Any person while driving or operating any farm tractor or implement of husbandry (~~((which))~~) that is only incidentally operated or moved over a highway;
or

(6) (~~((Any person while operating))~~) An operator of a locomotive upon rails, including ((operation on) a railroad crossing over a public highway((+and such person)). A locomotive operator is not required to display a driver's license to any law enforcement officer in connection with the operation of a locomotive or train within this state.

Sec. 7. RCW 46.20.031 and 1995 c 219 s 1 are each amended to read as follows:

The department shall not issue a driver's license (~~((hereunder))~~) to a person:

(1) (~~((To any person))~~) Who is under the age of sixteen years;

(2) (~~((To any person whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in))~~) Whose driving privilege has been withheld unless and until the department may authorize the driving privilege under RCW 46.20.311;

(3) (~~((To any person))~~) Who has been ((evaluated)) classified as an alcoholic, drug addict, alcohol abuser, or drug abuser by a program approved by the department of social and health services ((as being an alcoholic, drug addict, alcohol abuser, and/or drug abuser: PROVIDED, That)). The department may, however, issue a license ((may be issued)) if the ((department determines that such)) person;

(a) Has been granted a deferred prosecution((+pursuant to)) under chapter 10.05 RCW((+)); or

(b) Is satisfactorily participating in or has successfully completed an alcohol or drug abuse treatment program approved by the department of social and health services and has established control of his or her alcohol ((and/or)) or drug abuse problem;

(4) (~~((To any person))~~) Who has previously been adjudged to be mentally ill or insane, or to be incompetent due to ((any)) a mental disability or disease((+and who has not at the time of application)). The department shall, however, issue a license to the person if he or she otherwise qualifies and;

(a) Has been restored to competency by the methods provided by law((+ PROVIDED, HOWEVER, That no person so adjudged shall be denied a license for such cause if)); or

(b) The superior court ((should find him)) finds the person able to operate a motor vehicle with safety upon the highways during such incompetency;

(5) (~~((To any person who is))~~) Who has not passed the driver's licensing examination required by ((this chapter to take an examination, unless such person shall have successfully passed such examination)) RCW 46.20.120 and 46.20.305, if applicable;

(6) (~~((To any person))~~) Who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

~~(7) ((To any person when the department has good and substantial evidence to reasonably conclude that such person by reason of)) Who is unable to safely operate a motor vehicle upon the highways due to a physical or mental disability ((would not be able to operate a motor vehicle with safety upon the highways;)). The department's conclusion that a person is barred from licensing under this subsection must be reasonable and be based upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction;~~

~~(8) ((To a person when the department has been notified by a court that the person)) Who has violated his or her written promise to appear, respond, or comply regarding a notice of infraction issued for ((a)) abandonment of a vehicle in violation of RCW 46.55.105, unless;~~

~~(a) The court has not notified the department of the violation;~~

~~(b) The department has received notice from the court showing that the person has been found not to have committed the violation of RCW 46.55.105((, or that)); or~~

~~(c) The person has paid all monetary penalties owing, including completion of community service, and ((that)) the court is satisfied that the person has made restitution as provided by RCW 46.55.105(2).~~

Sec. 8. RCW 46.20.035 and 1998 c 41 s 10 are each amended to read as follows:

~~((+)) The department may not issue an identicard or a Washington state driver's license((, except as provided in RCW 46.20.116;)) that is valid for identification purposes unless the applicant ((has satisfied the department regarding his or her identity. Except as provided in subsection (2) of this section, an applicant has not satisfied the identity requirements of this section unless he or she displays or provides)) meets the identification requirements of subsection (1), (2), or (3) of this section.~~

~~(1) A driver's license or identicard applicant must provide the department with at least one of the following pieces of valid identifying documentation that contains the signature and a photograph of the applicant:~~

~~(a) A valid or recently expired driver's license or instruction permit that ((contains the signature;)) includes the date of birth((, and a photograph)) of the applicant;~~

~~(b) A Washington state identicard or an identification card issued by another state ((that contains the signature and a photograph of the applicant));~~

~~(c) An identification card issued by the United States, a state, or an agency of either the United States or a state, of a kind commonly used to identify the members ((of)) or employees of the government agency((, that contains the signature and a photograph of the applicant));~~

~~(d) A military identification card ((that contains the signature and a photograph of the applicant));~~

~~(e) A United States passport ((that contains the signature and a photograph of the applicant)); or~~

(f) An Immigration and Naturalization Service form ~~((that contains the signature and photograph of the applicant; or)).~~

~~((g) If the)) (2) An applicant who is a minor(;) may establish identity by providing an affidavit of the applicant's parent or guardian ((where)). The parent or guardian must accompany the minor and display((s) or provide((s));~~

(a) At least one piece of ((identifying)) documentation ((as specified in this)) in subsection ((along with)) (1) of this section establishing the identity of the parent or guardian; and

(b) Additional documentation establishing the relationship between the parent or guardian and the applicant.

~~((2)) (3) A person unable to provide identifying documentation as specified in subsection (1) or (2) of this section may request that the department review other available documentation in order to ascertain identity. The department may waive the requirement ((for specific identifying documentation under subsection (1) of this section)) if it finds that other documentation clearly establishes the identity of the applicant.~~

~~((3)) (4) The form of an applicant's name, as established under this section, must be the person's name of record for the purposes of this chapter.~~

(5) If the applicant is unable to prove his or her identity under this section, the department shall plainly label the license "not valid for identification purposes."

Sec. 9. RCW 46.20.041 and 1986 c 176 s 1 are each amended to read as follows:

(1) ((The department shall permit any)) If the department has reason to believe that a person is suffering from ((any)) a physical or mental disability or disease ((which)) that may affect that person's ability to drive a motor vehicle, ((to)) the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding ((such)) the disability or disease he or she is ((a proper person)) able to safely drive a motor vehicle.

(b) The department may ((in addition)) require ((such)) the person to obtain a ((certificate showing his or her condition)) statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition.

(i) The certificate ((shall be)) is for the confidential use of the director and the chief of the Washington state patrol and for ((such)) other ((cognizant)) public officials ((as may be)) designated by law. It ((shall be)) is exempt from public inspection and copying notwithstanding ((the provisions of)) chapter 42.17 RCW.

(ii) The certificate may not be offered as evidence in any court except when appeal is taken from the order of the director ((suspending, revoking, canceling, or refusing a vehicle driver's license)) canceling or withholding a person's driving privilege. However, the department may make the certificate ((may be made)) available to the director of the department of retirement systems for use in

determining eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning ~~((such))~~ the disability benefits.

(2) On the basis of the evaluation the department may:

(a) Issue or renew a driver's license to the person without restrictions;

(b) Cancel or withhold the driving privilege from the person; or

(c) Issue a restricted driver's license to ~~((such-a))~~ the person ~~((imposing restrictions))~~. The restrictions must be suitable to the licensee's driving ability ~~((with respect to))~~. The restrictions may include:

(i) Special mechanical control devices ~~((required on a))~~ on the motor vehicle ~~((or))~~ operated by the licensee;

(ii) Limitations on the type of motor vehicle ~~((which))~~ that the licensee may operate; or ~~((such))~~

(iii) Other restrictions ~~((applicable to the licensee as the department may))~~ determined by the department to be appropriate to assure the licensee's safe operation of a motor vehicle ~~((by the licensee))~~.

(3) The department may either issue a special restricted license or may set forth ~~((such))~~ the restrictions upon the usual license form.

(4) The department may suspend or revoke a restricted license upon receiving satisfactory evidence of any violation of the restrictions ~~((of such license suspend or revoke the same but))~~. In that event the licensee ~~((shall be))~~ is entitled to a driver improvement interview and a hearing as ~~((upon a suspension or revocation under this chapter))~~ provided by RCW 46.20.322 or 46.20.328.

(5) ~~((It is a traffic infraction for any person to operate))~~ Operating a motor vehicle ~~((in any manner))~~ in violation of the restrictions imposed in a restricted license ~~((issued to him or her))~~ is a traffic infraction.

Sec. 10. RCW 46.20.045 and 1971 ex.s. c 292 s 43 are each amended to read as follows:

~~((No))~~ A person who is under the age of eighteen years shall not drive ~~((any))~~;

(1) A school bus transporting school children; or ~~((shall drive any))~~

(2) A motor vehicle ~~((when in use for the transportation of))~~ transporting persons for compensation.

Sec. 11. RCW 46.20.055 and 1990 c 250 s 34 are each amended to read as follows:

~~((1))~~ Any person who is at least fifteen and a half years of age may apply to the department for an instruction permit for the operation of any motor vehicle except a motorcycle. Any person sixteen years of age or older, holding a valid driver's license, may apply for an instruction permit for the operation of a motorcycle. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant a driver's or motorcycleist's instruction permit.

~~((a))~~ A driver's instruction permit entitles the permittee while having the permit in immediate possession to drive a motor vehicle upon the public highways for a

~~period of one year when accompanied by a licensed driver who has had at least five years of driving experience and is occupying a seat beside the driver. Except as provided in subsection (e) of this subsection, only one additional permit, valid for one year, may be issued.~~

~~— (b) A motorcycleist's instruction permit entitles the permittee while having the permit in immediate possession to drive a motorcycle upon the public highways for a period of ninety days as provided in RCW 46.20.510(3). Except as provided in subsection (e) of this subsection, only one additional permit, valid for ninety days, may be issued.~~

~~— (c) The department after investigation may issue a third driver's or motorcycleist's instruction permit when it finds that the permittee is diligently seeking to improve driving proficiency.~~

~~— (2) The department may waive the examination, except as to eyesight and other potential physical restrictions, for any applicant who is enrolled in either a traffic safety education course as defined by RCW 28A.220.020(2) or a course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1) at the time the application is being considered by the department. The department may require proof of registration in such a course as it deems necessary.~~

~~— (3) The department upon receiving proper application may in its discretion issue a driver's instruction permit to an applicant who is at least fifteen years of age and is enrolled in a traffic safety education program which includes practice driving and which is approved and accredited by the superintendent of public instruction. Such instruction permit shall entitle the permittee having the permit in immediate possession to drive a motor vehicle only when an approved instructor or other licensed driver with at least five years of driving experience, is occupying a seat beside the permittee.~~

~~— (4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to drive a motor vehicle for a period not to exceed sixty days while the department is completing its investigation and determination of all facts relative to such applicant's right to receive a driver's license. Such permit must be in the permittee's immediate possession while driving a motor vehicle, and it shall be invalid when the permittee's license has been issued or for good cause has been refused:))~~

(1) Driver's instruction permit. (a) A person who is at least fifteen and one-half years of age may apply to the department for a driver's instruction permit. The department may issue a driver's instruction permit after the applicant has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, and paid a five-dollar fee.

(b) The department may issue a driver's instruction permit to an applicant who is at least fifteen years of age if he or she:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program approved and accredited by the superintendent of public instruction that includes practice driving.

(2) Waiver of written examination for instruction permit. The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

(a) A traffic safety education course as defined by RCW 28A.220.020(2); or

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1).

The department may require proof of registration in such a course as it deems necessary.

(3) Effect of instruction permit. A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

(a) The person has immediate possession of the permit; and

(b) The seat beside the driver is occupied by an approved instructor, or a licensed driver with at least five years of driving experience.

(4) Term of instruction permit. A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

NEW SECTION. Sec. 12. A new section is added to chapter 46.20 RCW to read as follows:

(1) If the department is completing an investigation and determination of facts concerning an applicant's right to receive a driver's license, it may issue a temporary driver's permit to the applicant.

(2) A temporary driver's permit authorizes the permittee to drive a motor vehicle for up to sixty days. The permittee must have immediate possession of the permit while driving a motor vehicle.

(3) A temporary driver's permit is invalid if the department has issued a license to the permittee or refused to issue a license to the permittee for good cause.

Sec. 13. RCW 46.20.070 and 1997 c 82 s 1 are each amended to read as follows:

~~((Upon receiving a written application on a form provided by the director for permission for a person under the age of eighteen years to operate a motor vehicle over and upon the public highways of this state in connection with farm work, the director may issue a limited driving permit containing a photograph to be known as a juvenile agricultural driving permit, such issuance to be governed by the following procedure:~~

~~—(1) The application must be signed by the applicant and by the applicant's father, mother, or legal guardian.~~

~~— (2) Upon receipt of the application, the director shall cause an examination of the applicant to be made as by law provided for the issuance of a motor vehicle driver's license:~~

~~— (3) The director shall cause an investigation to be made of the need for the issuance of such operation by the applicant. The permit also authorizes the holder to participate in the classroom portion of any traffic safety education course authorized under RCW 28A.220.030 that is offered in the community in which the holder is a resident:~~

~~— Such permit authorizes the holder to operate a motor vehicle over and upon the public highways of this state within a restricted farming locality which shall be described upon the face thereof:~~

~~— A permit issued under this section shall expire one year from date of issue, except that upon reaching the age of eighteen years such person holding a juvenile agricultural driving permit shall be required to make application for a motor vehicle driver's license:~~

~~— The director shall charge a fee of three dollars for each such permit and renewal thereof to be paid as by law provided for the payment of motor vehicle driver's licenses and deposited to the credit of the highway safety fund:~~

~~— The director may transfer this permit from one farming locality to another, but this does not constitute a renewal of the permit:~~

~~— The director may deny the issuance of a juvenile agricultural driving permit to any person whom the director determines to be incapable of operating a motor vehicle with safety to himself or herself and to persons and property:~~

~~— The director may suspend, revoke, or cancel the juvenile agricultural driving permit of any person when in the director's sound discretion the director has cause to believe such person has committed any offense for which mandatory suspension or revocation of a motor vehicle driver's license is provided by law:~~

~~— The director may suspend, cancel, or revoke a juvenile agricultural driving permit when in the director's sound discretion the director is satisfied the restricted character of the permit has been violated:))~~

(1) Agricultural driving permit authorized. The director may issue a juvenile agricultural driving permit to a person under the age of eighteen years if:

(a) The application is signed by the applicant and the applicant's father, mother, or legal guardian;

(b) The applicant has passed the driving examination required by RCW 46.20.120;

(c) The department has investigated the applicant's need for the permit and determined that the need justifies issuance;

(d) The department has determined the applicant is capable of operating a motor vehicle without endangering himself or herself or other persons and property; and

(e) The applicant has paid a fee of three dollars.

The permit must contain a photograph of the person.

(2) Effect of agricultural driving permit. (a) The permit authorizes the holder to:

(i) Drive a motor vehicle on the public highways of this state in connection with farm work. The holder may drive only within a restricted farming locality described on the permit; and

(ii) Participate in the classroom portion of a traffic safety education course authorized under RCW 28A.220.030 offered in the community where the holder resides.

(b) The director may transfer the permit from one farming locality to another. A transfer is not a renewal of the permit.

(3) Term and renewal of agricultural driving permit. An agricultural driving permit expires one year from the date of issue.

(a) A person under the age of eighteen who holds a permit may renew the permit by paying a three-dollar fee.

(b) An agricultural driving permit is invalidated when a permittee attains age eighteen. In order to drive a motor vehicle on a highway he or she must obtain a motor vehicle driver's license under this chapter.

(4) Suspension, revocation, or cancellation. The director has sole discretion to suspend, revoke, or cancel a juvenile agricultural driving permit if:

(a) The permittee has been found to have committed an offense that requires mandatory suspension or revocation of a driver's license; or

(b) The director is satisfied that the permittee has violated the permit's restrictions.

Sec. 14. RCW 46.20.091 and 1998 c 41 s 11 are each amended to read as follows:

~~((1) Every application for an instruction permit or for an original driver's license shall be made upon a form prescribed and furnished by the department which shall be sworn to and signed by the applicant before a person authorized to administer oaths. An applicant making a false statement under this subsection is guilty of false swearing, a gross misdemeanor, under RCW 9A.72.040. Every application for an instruction permit containing a photograph shall be accompanied by a fee of five dollars. The department shall forthwith transmit the fees collected for instruction permits and temporary drivers' permits to the state treasurer.~~

~~(2) Every such application shall state the name of record, date of birth, sex, and Washington residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and shall state such additional information as the department shall require, including a statement that identifying documentation presented by the applicant is valid.~~

~~—(3) Whenever application is received from)~~ **(1) Application.** In order to apply for a driver's license or instruction permit the applicant must provide his or her:

(a) Name of record, as established by documentation required under RCW 46.20.035;

(b) Date of birth, as established by satisfactory evidence of age;

(c) Sex;

(d) Washington residence address;

(e) Description;

(f) Driving licensing history, including:

(i) Whether the applicant has ever been licensed as a driver or chauffeur and, if so, (A) when and by what state or country; (B) whether the license has ever been suspended or revoked; and (C) the date of and reason for the suspension or revocation; or

(ii) Whether the applicant's application to another state or country for a driver's license has ever been refused and, if so, the date of and reason for the refusal; and

(g) Any additional information required by the department.

(2) Sworn statement. An application for an instruction permit or for an original driver's license must be made upon a form provided by the department. The identifying documentation verifying the name of record must be accompanied by the applicant's written statement that it is valid. The information provided on the form must be sworn to and signed by the applicant before a person authorized to administer oaths. An applicant who makes a false statement on an application for a driver's license or instruction permit is guilty of false swearing, a gross misdemeanor, under RCW 9A.72.040.

(3) Driving records from other jurisdictions. If a person previously licensed in another jurisdiction applies for a Washington driver's license, the department shall request a copy of ~~((such)) the applicant's~~ driver's record from ~~((such)) the~~ other jurisdiction. ~~((When received,)) The driving record ~~((shall))~~ from the other jurisdiction becomes a part of the driver's record in this state.~~

(4) ~~((Whenever the department receives request for a driving record from)) Driving records to other jurisdictions.~~ If another ~~((licensing))~~ jurisdiction requests a copy of a person's Washington driver's record, the department shall provide a copy of the record. The department shall forward the record ~~((shall be forwarded))~~ without charge if the other ~~((licensing))~~ jurisdiction extends the same privilege to the state of Washington. Otherwise ~~((there)) the department~~ shall ~~((be a reasonable))~~ charge a reasonable fee for transmittal of the record~~((, the amount to be fixed by the director of the department)).~~

Sec. 15. RCW 46.20.095 and 1998 c 165 s 5 are each amended to read as follows:

The department's ~~((shall))~~ instructional publications for drivers must include information on;

(1) The proper use of the left-hand lane by motor vehicles on multilane highways; and ((en))

(2) Bicyclists' and pedestrians' rights and responsibilities ((in its instructional publications for drivers)).

Sec. 16. RCW 46.20.100 and 1990 c 250 s 36 are each amended to read as follows:

(1) Application. ~~The ((department of licensing shall not consider an)) application of ((any minor)) a person under the age of eighteen years for a driver's license or ((the issuance of)) a motorcycle endorsement ((for a particular category unless:~~

~~— (1) The application is also)) must be signed by a parent or guardian ((having the)) with custody of ((such)) the minor((; or in the event a)). If the minor under the age of eighteen has no father, mother, or guardian, then ((a driver's license shall not be issued to the minor unless his or her)) the application ((is also)) must be signed by the minor's employer((; and)).~~

(2) Traffic safety education requirement. ~~((The applicant has satisfactorily completed a)) For a person under the age of eighteen years to obtain a driver's license he or she must meet the traffic safety education requirements of this subsection.~~

(a) To meet the traffic safety education requirement for a driver's license the applicant must satisfactorily complete a traffic safety education course as defined in RCW 28A.220.020((; conducted by a recognized secondary school, that meets)), The course must meet the standards established by the office of the state superintendent of public instruction ((or the applicant has satisfactorily completed a traffic safety education course, conducted by a commercial driving instruction enterprise, that meets the standards established)). The traffic safety education course may be provided by:

(i) A recognized secondary school; or

(ii) A commercial driving enterprise that is annually approved by the office of the superintendent of public instruction ((and is officially approved by that office on an annual basis: PROVIDED, HOWEVER, That the director may upon a showing that an applicant was unable to take or complete a driver education course waive that requirement if the applicant shows to the satisfaction of the department that a need exists for the applicant to operate a motor vehicle and he or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property, under rules to be promulgated by the department in concert with the supervisor of the traffic safety education section, office of the superintendent of public instruction. For a person under the age of eighteen years to obtain)).

(b) To meet the traffic safety education requirement for a motorcycle endorsement, ((he or she)) the applicant must successfully complete a motorcycle safety education course that meets the standards established by the department of licensing.

(c) The department may waive the traffic safety education requirement for a driver's license if the applicant demonstrates to the department's satisfaction that:

(i) He or she was unable to take or complete a traffic safety education course;
(ii) A need exists for the applicant to operate a motor vehicle; and
(iii) He or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property, under rules adopted by the department in concert with the supervisor of the traffic safety education section of the office of the superintendent of public instruction.

~~(d) The department may waive ((any)) the traffic safety education requirement ((under this subsection for an)) if the applicant ((previously)) was licensed to drive a motor vehicle or motorcycle outside this state ((if the applicant)) and provides proof ((satisfactory to the department)) that he or she has had education equivalent to that required under this subsection.~~

Sec. 17. RCW 46.20.114 and 1977 ex.s. c 27 s 2 are each amended to read as follows:

~~(On and after January 1, 1978,)) The department shall ((implement and use such process or processes in the preparation and issuance of)) prepare and issue drivers' licenses and identicards using processes that prohibit as nearly as possible the alteration or reproduction of such cards, or the superimposing of other photographs on such cards, without ready detection.~~

Sec. 18. RCW 46.20.117 and 1993 c 452 s 3 are each amended to read as follows:

(1) Issuance. The department shall issue ~~((“identicards,“))~~ a resident of the state of Washington an identicard, containing a picture, ~~((to nondrivers for a fee of four dollars. However, the fee shall be the actual cost of production to recipients of continuing public assistance grants under Title 74 RCW who are referred in writing to the department by the secretary of social and health services. The fee shall be deposited in the highway safety fund. To be eligible, each applicant shall produce evidence as required in RCW 46.20.035 that positively proves identity. The “identicard” shall))~~ if he or she:

(a) Does not hold a valid Washington driver's license;

(b) Proves his or her identity as required by RCW 46.20.035; and

(c) Pays the required fee. The fee is four dollars unless an applicant is a recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services. For those persons the fee must be the actual cost of production of the identicard.

(2) Design and term. The identicard must:

(a) Be distinctly designed so that it will not be confused with the official driver's license((~~—The identicard shall~~)); and

(b) Expire on the fifth anniversary of the applicant's birthdate after issuance.

~~((2))~~ (3) Cancellation. The department may cancel an ~~((“))~~identicard~~((“ upon a showing by its records or other evidence that))~~ if the holder of ((such“)) the

~~identocard((“ has committed a violation relating to “identicards” defined)) used the card or allowed others to use the card in violation of RCW 46.20.336.~~

Sec. 19. RCW 46.20.120 and 1990 c 9 s 1 are each amended to read as follows:

~~((No new driver's license may be issued and no previously issued license may be renewed until the applicant therefor has successfully passed)) An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department shall give examinations at places and times reasonably available to the people of this state. ((However,))~~

(1) Waiver. The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license ((except when)) unless the department determines that ((an)) the applicant ((for a driver's license)) is not qualified to hold a driver's license under this title((The department may also waive)); or

(b) The actual demonstration of the ability to operate a motor vehicle ((by a person who)) if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; and ((who))

(ii) Is otherwise qualified to be licensed. ((For a new license))

(2) Fee. Each applicant for a new license must pay an examination ((a)) fee of seven dollars ((shall be paid by each applicant;)).

(a) The examination fee is in addition to the fee charged for issuance of the license.

~~((A))~~ (b) "New license ((is one))" means a license issued to a driver;

(i) Who has not been previously licensed in this state; or ((to a driver))

(ii) Whose last previous Washington license has been expired for more than four years.

~~((Any person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee under RCW 46.20.181. The penalty fee shall be deposited in the highway safety fund:~~

~~— Any person who is outside the state at the time his or her driver's license expires or who is unable to renew the license due to any incapacity may renew the license within sixty days after returning to this state or within sixty days after the termination of any such incapacity without the payment of the penalty fee.~~

~~— The department shall provide for giving examinations at places and times reasonably available to the people of this state.))~~

Sec. 20. RCW 46.20.130 and 1990 c 250 s 39 are each amended to read as follows:

(1) The director shall prescribe the content of the driver licensing examination and the manner of conducting the examination, which shall include but is not limited to:

~~((+))~~ (a) A test of the applicant's eyesight and ability to see, understand, and follow highway signs regulating, warning, and directing traffic;

~~((2))~~ (b) A test of the applicant's knowledge of traffic laws and ability to understand and follow the directives of lawful authority, orally or graphically, that regulate, warn, and direct traffic in accordance with the traffic laws of this state;

~~((3))~~ (c) An actual demonstration of the applicant's ability to operate a motor vehicle ~~((in such a manner as not to jeopardize))~~ without jeopardizing the safety of persons or property; and

~~((4))~~ (d) Such further examination as the director deems necessary;

~~((a))~~ (i) To determine whether any facts exist ((which)) that would bar the issuance of a vehicle operator's license under chapters 46.20, 46.21, and 46.29 RCW((;)); and

~~((b))~~ (ii) To determine the applicant's fitness to operate a motor vehicle safely on the highways((; and)),

~~((5) In addition to the foregoing, when)) (2) If the applicant desires to drive a motorcycle((; as defined in RCW 46.04.330;)) or a motor-driven cycle((; as defined in RCW 46.04.332, the applicant shall also demonstrate the ability to operate such motorcycle or motor-driven cycle in such a manner as not to jeopardize the safety of persons or property)) he or she must qualify for a motorcycle endorsement under RCW 46.20.500 through 46.20.515.~~

Sec. 21. RCW 46.20.157 and 1993 c 408 s 12 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall annually provide to the department of information services ~~((at no charge a computer tape or))~~ an electronic data file ((ef)). The data file must:

(a) Contain information on all licensed drivers and identicard holders who are eighteen years of age or older and whose records have not expired for more than two years ~~((and which shall));~~

(b) Be provided at no charge; and

(c) Contain the following information on each such person: Full name, date of birth, residence address including county, sex, and most recent date of application, renewal, replacement, or change of driver's license or identicard.

(2) Before complying with subsection (1) of this section, the department shall remove from the ~~((tape or))~~ file the names of any certified participants in the Washington state address confidentiality program under chapter 40.24 RCW that have been identified to the department by the secretary of state.

Sec. 22. RCW 46.20.161 and 1998 c 41 s 12 are each amended to read as follows:

The department, upon receipt of a fee of fourteen dollars, which includes the fee for the required photograph, shall issue to every qualifying applicant ~~((qualifying therefor))~~ a driver's license~~((; which)),~~ The license ((shall bear thereon)) must include a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, ((and)) a brief

description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

Sec. 23. RCW 46.20.181 and 1990 c 250 s 41 are each amended to read as follows:

(1) Every driver's license expires on the fourth anniversary of the licensee's birthdate following the issuance of the license. ((Every such license is renewable))

(2) A person may renew his or her license on or before ((his)) the expiration ((upon)) date by submitting an application as prescribed by the department and ((the payment of)) paying a fee of fourteen dollars. This fee includes the fee for the required photograph.

(3) A person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee, unless his or her license expired when:

(a) The person was outside the state and he or she renews the license within sixty days after returning to this state; or

(b) The person was incapacitated and he or she renews the license within sixty days after the termination of the incapacity.

Sec. 24. RCW 46.20.205 and 1998 c 41 s 13 are each amended to read as follows:

(1) 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 record of a licensee or holder of an identicard is changed by marriage or otherwise)), the person shall within ten days thereafter notify the department of the address change. The notification must be 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)) and must include the number of ((any)) the person's driver's license ((then held by him or her)). The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identicard holder may be changed.

(a) 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.

(b) Any notice regarding the cancellation, suspension, revocation, disqualification, probation, or nonrenewal of the driver's license, commercial driver's license, driving privilege, or identicard mailed to the address of record of the licensee or identicard holder is effective notwithstanding the licensee's or identicard holder's failure to receive the notice.

(2) When a licensee or holder of an identicard changes his or her name of record, the person shall notify the department of the name change. The person must make the notification within ten days of the date that the name change is effective. The notification must be in writing on a form provided by the department and must include the number of the person's driver's license. The department of licensing shall not change the name of record of a person under this section unless the person has again satisfied the department regarding his or her identity in the manner provided by RCW 46.20.035.

Sec. 25. RCW 46.20.510 and 1989 c 337 s 9 are each amended to read as follows:

(1) **Categories.** There ~~((shall be))~~ are three categories for the special motorcycle endorsement of a driver's license. Category one ~~((shall be))~~ is for motorcycles or motor-driven cycles having an engine displacement of one hundred fifty cubic centimeters or less. Category two ~~((shall be))~~ is for motorcycles having an engine displacement of five hundred cubic centimeters or less. Category three ~~((shall))~~ includes categories one and two, and ~~((shall be))~~ is for motorcycles having an engine displacement of five hundred one cubic centimeters or more.

(2) ~~((The department may issue a motorcycle instruction permit to an individual))~~ **Motorcycle instruction permit.** A person holding a valid driver's license who wishes to learn to ride a motorcycle or obtain an endorsement of a larger ~~((endorsement))~~ category ~~((for a period not to exceed ninety days. This motorcycle instruction permit may be renewed for an additional ninety days))~~ may apply for a motorcycle instruction permit. The department may issue a motorcycle instruction permit after the applicant has successfully passed all parts of the motorcycle examination other than the driving test. The director shall collect a two dollar and fifty cent fee for the ~~((motorcyclist's))~~ motorcycle instruction permit or renewal, and deposit the fee ~~((shall be deposited))~~ in the motorcycle safety education account of the highway safety fund. ~~((This permit))~~

(3) **Effect of motorcycle instruction permit.** A person holding a motorcycle instruction permit may drive a motorcycle upon the public highways if the person has immediate possession of the permit and a valid driver's license with current endorsement, if any ~~((, shall be carried when operating a motorcycle))~~. An individual with a motorcycle instruction permit may not carry passengers, may not operate a motorcycle during the hours of darkness or on a fully-controlled, limited-access facility, and shall be under the direct visual supervision of a person with a motorcycle endorsement of the appropriate category and at least five years' riding experience.

(4) **Term of motorcycle instruction permit.** A motorcycle instruction permit is valid for ninety days from the date of issue.

(a) The department may issue one additional ninety-day permit.

(b) The department may issue a third motorcycle instruction permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

Sec. 26. RCW 46.64.070 and 1973 2nd ex.s. c 22 s 1 are each amended to read as follows:

To carry out the purpose of RCW 46.64.060 and 46.64.070, officers of the Washington state patrol are hereby empowered during daylight hours and while using plainly marked state patrol vehicles to require the driver of any motor vehicle being operated on any highway of this state to stop and display his or her driver's license and/or to submit the motor vehicle being driven by such person to an inspection and test to ascertain whether such vehicle complies with the minimum equipment requirements prescribed by chapter 46.37 RCW, as now or hereafter amended. No criminal citation shall be issued for a period of ten days after giving a warning ticket pointing out the defect.

The powers conferred by RCW 46.64.060 and 46.64.070 are in addition to all other powers conferred by law upon such officers, including but not limited to powers conferred upon them as police officers pursuant to RCW 46.20.430 (as recodified by this act) and powers conferred by chapter 46.32 RCW.

NEW SECTION. Sec. 27. (1) The following subchapter headings are added to chapter 46.20 RCW.

(a) RCW 46.20.005 through 46.20.070 are included under the subchapter heading "Driver's license and permit requirements";

(b) RCW 46.20.091 through 46.20.205 are included under the subchapter heading "Obtaining or renewing a driver's license";

(c) RCW 46.20.207 through 46.20.320 are included under the subchapter heading "Withholding the driving privilege";

(d) RCW 46.20.322 through 46.20.335 are included under the subchapter heading "Driver improvement";

(e) RCW 46.20.338 through 46.20.355 are included under the subchapter heading "Driving or using license while suspended or revoked";

(f) RCW 46.20.380 through 46.20.410 are included under the subchapter heading "Occupational driver's license";

(g) RCW 46.20.500 through 46.20.520 are included under the subchapter heading "Motorcycles";

(h) RCW 46.20.710 through 46.20.750 are included under the subchapter heading "Alcohol detection devices";

(i) RCW 46.20.900 through 46.20.911 are included under the subchapter heading "Miscellaneous."

(2) The range of numbers included in each subchapter delineated in this section may be expanded as deemed necessary by the code reviser in order to include recodified or newly codified sections within a particular subchapter.

(3) Subchapter headings in this title are not part of the law.

NEW SECTION. Sec. 28. (1) RCW 46.20.190 is recodified as RCW 46.20.017.

(2) RCW 46.20.336 and 46.20.550 are recodified as part of the subchapter of chapter 46.20 RCW labeled "Obtaining or renewing a driver's license."

(3) RCW 46.20.343 and 46.20.470 are recodified as part of the subchapter of chapter 46.20 RCW labeled "Driver's license and permit requirements."

(4) RCW 46.20.414 is recodified as part of the subchapter of chapter 46.20 RCW labeled "Withholding the driving privilege."

(5) RCW 46.20.430 is recodified as part of the subchapter of chapter 46.20 RCW labeled "Driving or using license while suspended or revoked."

NEW SECTION. Sec. 29. The following acts or parts of acts are each repealed:

(1) RCW 46.20.106 (Evidence of applicant's age) and 1965 ex.s. c 121 s 14 & 1961 c 12 s 46.20.106; and

(2) RCW 46.20.116 (Labeling license "not valid for identification purposes") and 1993 c 452 s 2 & 1969 ex.s. c 155 s 3.

Passed the House February 19, 1999.

Passed the Senate March 11, 1999.

Approved by the Governor March 30, 1999.

Filed in Office of Secretary of State March 30, 1999.

CHAPTER 7

[Senate Bill 6048]

RETROSPECTIVE RATING GROUPS

AN ACT Relating to the entrance criteria for retrospective rating groups; amending RCW 51.16.035; and adding a new chapter to Title 51 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that the retrospective rating plan provided for in RCW 51.16.035 has proven to be highly effective both in terms of improved workplace safety and injured worker outcomes. As a result, the number of industrial insurance claims of many employers participating in the retrospective rating plan have been reduced through sound risk management strategies and enhanced cooperation with department claims management activities.

The legislature further finds that entrance criteria for the retrospective rating plan under RCW 51.16.035 should be clear and understandable to both the department and potential retrospective rating plan participants.

The legislature therefore declares that a new retrospective rating plan is needed in order to protect and preserve the integrity and welfare of the retrospective rating system.

NEW SECTION. Sec. 2. (1) The department shall offer a retrospective rating plan to insure the workers' compensation obligations of employers and groups of employers. The plan is to be made available to any employer or group of employers who:

- (a) Voluntarily elects to participate in the plan; and
- (b) Meets the requirements of this chapter and rules adopted by the department under subsection (2) of this section.

(2) The retrospective rating plan shall be consistent with recognized insurance principles and shall be administered according to rules adopted by the department. Rules adopted under this section shall encourage broad participation by qualified employers and sponsors of retrospective rating groups.

(3) Each retrospective rating group approved by the department under this chapter shall select a coverage period and may be renewed at the end of each coverage period. For the purposes of this section, "coverage period" means a twelve-month period provided by the department by rule.

NEW SECTION. Sec. 3. Prior to allowing initial entrance into the state's retrospective rating plan, the department shall review each proposed retrospective rating group to ensure that the following criteria are met:

(1) The entity sponsoring the retrospective rating group must have been in existence for at least four years;

(2) The entity sponsoring the retrospective rating group must exist primarily for a purpose other than that of obtaining or offering insurance coverage or insurance related services;

(3) The entity sponsoring the retrospective rating group must have a written workplace safety and accident prevention plan in place for the proposed retrospective rating group and must propose methods by which the retrospective rating group will cooperate with department claims management activities;

(4) All employers in the retrospective rating group must be members of the sponsoring entity;

(5) All employers in the retrospective rating group must have an industrial insurance account in good standing with the department;

(6) Fifty percent of the original employers in the retrospective rating group must have been members of the sponsoring entity for one year prior to the group's entrance into the retrospective rating plan;

(7) The retrospective rating group must be composed of employers who are substantially similar considering the services or activities performed by the employees of those employers;

(8) The initial premium level for the retrospective rating group must be at least one million five hundred thousand dollars and shall be based on the standard premium of the proposed group members' most current previous coverage period; and

(9) The formation and operation of the retrospective rating group must seek to substantially improve workplace safety and accident prevention for the employers in the group.

NEW SECTION. Sec. 4. (1) Entities which sponsored retrospective rating groups prior to the effective date of this act, may not sponsor additional

retrospective rating groups in a new business or industry category until the coverage period beginning January 1, 2003.

(2) For retrospective rating groups approved by the department on or after the effective date of this act, the sponsoring entity may not propose another retrospective rating group in a new business or industry category until the minimum mandatory adjustment periods required by the department for the first two coverage periods of the last formed retrospective rating group are completed.

(3) Subsections (1) and (2) of this section do not prohibit a sponsoring entity from proposing to:

(a) Divide an existing retrospective rating group into two or more groups provided that the proposed new groups fall within the same business or industry category as the group that is proposed to be divided; or

(b) Merge existing retrospective rating groups into one business or industry category provided that the proposed merged groups fall within the same business or industry category as the groups that are proposed to be merged.

(4) Under no circumstances may a sponsoring entity propose retrospective rating groups in multiple business or industry categories in the same application to the department.

(5) An insurer, insurance broker, agent, or solicitor may not:

(a) Participate in the formation of a retrospective rating group; or

(b) Sponsor a retrospective rating group.

NEW SECTION. **Sec. 5.** (1) In order to ensure that all retrospective rating groups are made up of employers who are substantially similar, considering the services or activities performed by the employees of those employers, the sponsoring entity of a retrospective rating group shall select a single, broad industry or business category for each retrospective rating group. Once an industry or business category is selected, the department shall allow all risk classifications reasonably related to that business or industry category into that retrospective rating group.

(2) The following broad industry and business categories shall be used by the sponsoring entity and the department in establishing retrospective rating groups:

(a) Agriculture and related services;

(b) Automotive, truck and boat manufacturing, sales, repair, and related services;

(c) Construction and related services;

(d) Distillation, chemical production, food, and related services;

(e) Facilities or property management, maintenance, and related services;

(f) Government, utilities, schools, health care, and related services;

(g) Health care, pharmaceutical, laboratories, and related services;

(h) Logging, wood products manufacturing, and related services;

(i) Manufacturing, processing, mining, quarrying, and related services;

(j) Retail stores, wholesale stores, professional services, and related services;

(k) Temporary help and related services; and

(1) Transportation, recycling, warehousing, facility maintenance, and related services.

(3) The industry and business categories in subsection (2) of this section are not exclusive. In response to significant changes in marketplace demographics or the discovery of unique business or industry categories, the department may, by rule, include additional broad industry or business category selections. The department may, by rule, remove an industry covered within an industry or business category in the event that the business or industry is no longer found within this state.

(4) Given the broad nature of the industry and business categories in subsection (2) of this section, the risk classification or classifications assigned to an individual employer may appropriately fall into multiple business or industry categories.

(5) In order to simplify administration and keep the administrative costs associated with devising a different classification system for a retrospective rating plan to a minimum, the state's retrospective rating plan shall follow the same classification procedure established by the department to assign workers' compensation insurance classifications to an employer.

(6) Employers who have been a member of an existing, approved retrospective rating group prior to the effective date of this act, may continue in that group even if they are not substantially similar to the industry or business category selected pursuant to subsection (1) of this section. However, new employers proposed for addition to a retrospective rating group on or after the effective date of this act must fall within the selected industry or business category.

NEW SECTION. Sec. 6. (1) Any retrospective rating group required to pay additional net premium assessments in two consecutive coverage periods shall be immediately placed on probationary status. Once a group is placed on probationary status, the department shall review the group's workplace safety and accident prevention plan and its methods for cooperation with department claims management activities. Following the review, the department shall make recommendations for corrective steps that may be taken to improve the group's performance.

(2) If the same retrospective rating group is required to pay an additional net premium assessment in the third consecutive coverage period, that group shall be denied future enrollment in the state's retrospective rating plan. In addition, the sponsoring entity of the failed group may not sponsor another group in the same business or industry category for five coverage periods from the ending date of the failed group's last coverage period.

(3) This section applies prospectively only and not retroactively. It applies only to net assessments received by a retrospective rating group for plan years beginning after the effective date of this act.

NEW SECTION. Sec. 7. All retrospective rating groups approved by the department prior to the effective date of this act, under RCW 51.16.035 as it

existed prior to the effective date of this act, remain approved and, with the exception of section 3 of this act, are subject to the provisions of this chapter.

Sec. 8. RCW 51.16.035 and 1989 c 49 s 1 are each amended to read as follows:

(1) The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

~~((The department may insure the workers' compensation obligations of employers as a group if the following conditions are met:~~

~~— (1) All the employers in the group are members of an organization that has been in existence for at least two years;~~

~~— (2) The organization was formed for a purpose other than that of obtaining workers' compensation coverage;~~

~~— (3) The occupations or industries of the employers in the organization are substantially similar, taking into consideration the nature of the services being performed by workers of such employers; and~~

~~— (4) The formation and operation of the group program in the organization will substantially improve accident prevention and claim management for the employers in the group:))~~

(2) In providing ~~((an employer group))~~ a retrospective rating plan under ~~((this))~~ section 2 of this act, the department may consider ~~((an employer))~~ each individual retrospective rating group as a single employing entity for purposes of dividends or premium discounts.

NEW SECTION. Sec. 9. Sections 1 through 7 of this act constitute a new chapter in Title 51 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 17, 1999.

Passed the House March 26, 1999.

Approved by the Governor April 5, 1999.

Filed in Office of Secretary of State April 5, 1999.

CHAPTER 8

[Substitute Senate Bill 5509]

HOLOCAUST VICTIMS INSURANCE RELIEF ACT

AN ACT Relating to the Holocaust victims insurance relief act; adding a new chapter to Title 48 RCW; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec. 1. INTENT.** (1) The legislature recognizes the existence of allegations that certain insurers doing business in the state of Washington, either directly or through related companies and affiliates, have failed to honor insurance policies issued during the World War II era. Although such policies were issued outside of the state of Washington, Washington has a clear obligation to seek justice for its citizens and residents.

(2) The legislature recognizes that allegations regarding a failure to pay legitimate insurance claims threaten the integrity of the insurance market. The basic commodity that insurers sell is trust. Policyholders pay substantial sums to insurers trusting that at a future date, perhaps decades later, the insurer will protect them and their loved ones. An insurer that violates this trust should not be authorized to do business in this state or own or control insurers doing business in this state, lest the integrity of this state's insurance market be compromised.

(3) The legislature recognizes that hundreds of Holocaust survivors and heirs of Holocaust victims are citizens or residents of the state of Washington. The legislature is concerned by allegations that citizens or residents of the state of Washington may have been deprived of their contractual entitlement to benefits under insurance policies issued by insurance companies operating in Europe prior to and during World War II. The state of Washington has a public policy interest in assuring that all of its citizens and residents, including Holocaust survivors, their families, and the heirs of Holocaust victims, who are entitled to proceeds of insurance policies are treated reasonably and fairly and that any contractual obligations are honored.

(4) The legislature recognizes that the business of insurance is one affected by the public interest, requiring that all persons conducting it be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The insurance commissioner is currently authorized to refuse, suspend, or revoke the certificate of authority of insurers that are affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations with any person, persons, or entities whose business operations are or have been marked, to the detriment of policyholders or the public, or by bad faith. The insurance commissioner is also currently authorized to provide assistance to members of the public in resolving complaints involving insurers. It is the intent of the legislature to provide additional resources to the insurance commissioner to implement this authority, to authorize the insurance commissioner to cooperate with other state regulators with regard to such policies, and to authorize the insurance commissioner to cooperate with and act through the international

commission concerning World War II era policies established under the efforts of the national association of insurance commissioners.

NEW SECTION. Sec. 2. FINDINGS. The legislature finds the following:

(1) In addition to the many atrocities that befell the victims of the Nazi regime, in many cases insurance policy proceeds were not paid to the victims and their families.

(2) In many instances, insurance company records are the only proof of insurance policies held. In some cases, recollection of those policies' very existence may have perished along with the Holocaust victims.

(3) Several hundred Holocaust survivors and their families, or the heirs of Holocaust victims live in Washington today.

(4) Insurance companies doing business in the state of Washington have a responsibility to ensure that any involvement they or their related companies had with insurance policies of Holocaust victims are disclosed to the state to ensure the rapid payment to victims and their survivors of any proceeds to which they may be entitled.

(5) There has been established an international commission to investigate and facilitate the payment of insurance policies to victims of the Holocaust and their survivors. It is in the best interest of the people of the state of Washington to authorize the insurance commissioner to cooperate with and coordinate his or her activities with the international commission.

(6) Other states are establishing Holocaust survivor assistance offices and registries of insurance policies and Holocaust victims in order to identify policyholders and their survivors to whom policy proceeds may be payable. It is in the best interest of the people of the state of Washington to authorize the insurance commissioner to cooperate with and coordinate his or her activities with those other states.

(7) In addition to unpaid insurance policies, Holocaust victims lost unknown billions of dollars of assets seized by Nazi Germany and its allies and collaborators in Germany and Nazi-occupied Europe between 1933 and 1945.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Holocaust survivor" or "Holocaust victim" means any person who was persecuted, imprisoned or liable to imprisonment, or had property taken or confiscated during the period of 1933 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers based on that person's race, religion, ethnicity, physical or mental disability, sexual orientation, or similar class or group-based animus.

(2) "Related company" means any parent, subsidiary, successor in interest, managing general agent, or other person or company affiliated directly or indirectly through ownership, control, common ownership or control, or other business or insurance relationship with another company or insurer.

(3) "Insurer" means an entity holding a certificate of authority or license to conduct the business of insurance in this state, or whose contacts with this state

satisfy the constitutional requirements for jurisdiction, that sold life, property, liability, health, annuities, dowry, educational, casualty, or any other insurance covering persons or property to persons in Europe at any time before 1945, whether directly or through or as result of sales by a related company, or is itself a related company to any person, entity, or insurance company that sold such policies, whether the sale of the insurance occurred before or after becoming related.

(4) "Proceeds" means the face or other payout value of policies and annuities plus reasonable interest to date of payments without diminution for wartime or immediate postwar currency devaluation legally due under any insurance policy issued by an insurer or any related company.

(5) "International commission" means the international commission on Holocaust era insurance claims, referenced in and established under a memorandum of understanding originally dated April 8, 1998, between and among the insurance commissioner, various other state insurance regulators, various alien insurance companies, and world-wide Jewish groups, which commission held its first meeting in New York on October 21, 1998, and any successor.

(6) "Other assets" means the proceeds of bank accounts, gold, art, houses, businesses, other real estate properties or land, or the contents of homes, businesses, or other real estate properties of Holocaust survivors or victims.

NEW SECTION. Sec. 4. HOLOCAUST SURVIVOR ASSISTANCE OFFICE. (1) To assist Holocaust victims, their heirs, or their beneficiaries to recover proceeds from insurance policies that were improperly denied or processed, or from other assets, or both, the insurance commissioner may establish a Holocaust survivor assistance office.

(2) The insurance commissioner may appoint or deputize personnel to be engaged or employed by the Holocaust survivor assistance office and utilize insurance department personnel to resolve or settle claims of Holocaust victims. The insurance commissioner may also engage outside auditors or other qualified personnel to assist in the investigation of claims made by Holocaust victims, their heirs, or their beneficiaries.

(3) The insurance commissioner may cooperate and exchange information with other states establishing similar Holocaust survivor assistance offices and with the international commission, and may enter into agreements whereby a single processing office may be established on behalf of, and to provide services to the residents of, several states.

NEW SECTION. Sec. 5. HOLOCAUST INSURANCE COMPANY REGISTRY. (1) To facilitate the work of the Holocaust survivor assistance office, the insurance commissioner may establish and maintain a central registry containing records and information relating to insurance policies, as described in section 6 of this act, of victims, living and deceased, of the Holocaust. The registry shall be known as the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to make the information in

the registry available to the public to the extent necessary and appropriate to determine the existence of insurance policies and to identify beneficiaries, successors in interest, or other persons entitled to the proceeds of such policies, and to enable such persons to claim proceeds to which they may be entitled, while protecting the privacy of policyholders, their survivors, and their family members. All information received by the Holocaust insurance company registry or Holocaust survivor assistance office from any insurer, related company, or foreign government or regulator shall be considered and deemed to be matters and information relating to an examination and part of an examination report that the insurance commissioner may treat as confidential and withhold from public inspection under RCW 48.03.040(6)(c) and 48.03.050. To the extent necessary and appropriate to secure access to documents and information located in or subject to the jurisdiction of other states and countries, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all documents and information received from an entity regulated by or subject to the laws of such other state or country, or received from any agency of the government of any such state or country, will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the appropriate authority of such state or country or except as permitted or authorized by the laws of such state or country, and any such agreement shall be binding and enforceable notwithstanding chapter 42.17 RCW. To the extent necessary and appropriate to secure access to documents and information from or in the possession of the international commission as to which the international commission has given assurances of confidentiality or privacy, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all such documents and information will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the international commission or as permitted by any agreement or assurances given by the international commission, and any such agreement shall be binding and enforceable notwithstanding chapter 42.17 RCW.

(2) The insurance commissioner may cooperate and exchange information with other states establishing similar registries and with the international commission, and may enter into agreements whereby a single registry may be established on behalf of, and to provide services to the citizens and residents of, several states.

NEW SECTION. Sec. 6. OPERATIONS OF HOLOCAUST INSURANCE COMPANY REGISTRY. (1) Any insurer that sold life, property, liability, health, annuities, dowry, educational, or casualty insurance policies, to persons in Europe, that were in effect any time between 1933 and 1945, regardless of when the policy was initially purchased or written, shall within ninety days following the effective date of this act, or such later date as the insurance commissioner may establish, file or cause to be filed the following information with the insurance commissioner to be entered into the Holocaust insurance company registry:

(a) A list of such insurance policies;
(b) The insureds, beneficiaries, and face amounts of such policies;
(c) A comparison of the names and other available identifying information of insureds and beneficiaries of such policies and the names and other identifying information of the victims of the Holocaust. The names and other identifying information of victims of the Holocaust shall be provided by the office of the insurance commissioner and may be obtained from the United States Holocaust museum and the Yad Vashem repository in Israel, or other sources;

(d) For each such policy, whichever of the following that may apply:

(i) That the proceeds of the policy have been paid to the designated beneficiaries or their heirs where that person or persons, after diligent search, could be located and identified;

(ii) That the proceeds of the policies where the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(iii) That a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds;

(iv) That the proceeds have not been distributed and the amount of those proceeds.

(2) The destruction of any records or other materials pertaining to such policies shall be a class C felony according to chapter 9A.20 RCW. Evidence of the destruction of such material shall be admissible in both administrative and judicial proceedings as evidence in support of any claim being made against the insurer involving the destroyed material.

(3) An insurer currently doing business in the state that did not sell any insurance policies in Europe prior to 1945 except through or as a result of sales by a related company shall not be subject to this section if a related company, whether or not authorized and currently doing business in the state, has made a filing with the insurance commissioner under this section.

(4) The insurance commissioner may fund the costs of operating both the Holocaust survivor assistance office and the Holocaust claims registry by assessments upon those insurers providing information to the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to fairly allocate the costs of the Holocaust insurance company registry and Holocaust survivor assistance office among such insurers. The insurance commissioner is expressly authorized to allocate such costs based on the number of policies reported or, based on the total monetary amount of the policies as determined by their face amounts without regard to inflation, interest, or depreciation.

(5) The insurance commissioner is authorized to conduct investigations and examinations of insurers for the purpose of determining compliance with this

chapter, verifying the accuracy and completeness of any and all information furnished to the Holocaust insurance company registry and the Holocaust survivor assistance office, and developing and securing such additional information as may be necessary or appropriate to determine those entitled to payment under any policy and the proceeds to which such person may be entitled, if any. Any such investigation shall be considered to be an examination under chapter 48.03 RCW. The costs of any such examination will be borne by the insurer investigated, or the insurer to whom the related company is related, pursuant to RCW 48.03.060(2). Examinations may be conducted in this state, or in the state or country of residence of the insurer or related company, or at such other place or country where the records to be examined may be located.

(6) The insurance commissioner may permit the Holocaust insurance company registry or the Holocaust survivor assistance office or both to accept information and to assist claimants with regard to the location and recovery of property or assets taken or confiscated from Holocaust victims other than insurance policies if the insurance commissioner finds that doing so would not adversely affect the operations of the registry or Holocaust survivor assistance office with regard to insurance policies. However, all costs and expenses, including that of personnel, attributable to such noninsurance assets shall be separately accounted for and shall not be assessed against insurers under subsections (4) and (5) of this section and shall not be paid from the general funds of the office of the insurance commissioner, but shall be paid solely from contributions or donations received for that purpose.

(a) The insurance commissioner may accept contributions from any other person wishing to fund the operations of the Holocaust survivor assistance office or the Holocaust insurance company registry to facilitate the resolution of claims involving Holocaust victims.

(b) The insurance commissioner is authorized to assist in the creation of an entity to accept tax deductible contributions to support activities conducted by the Holocaust survivor assistance office and the Holocaust insurance company registry.

(c) The insurance commissioner, through the Holocaust survivor assistance office, is authorized, with the consent of the parties, to act as mediator of any dispute involving the claim of a Holocaust victim or his or her heirs or beneficiaries arising from an occurrence during the period between January 1, 1933, and December 31, 1945.

(7) The insurance commissioner is authorized to cooperate with and exchange information with other states with similar Holocaust insurance company registries or Holocaust survivor assistance offices, with the national association of insurance commissioners, with foreign countries and with the international commission. The insurance commissioner is authorized to enter into agreements to handle the processing of claims and registry functions of other states, and to have other states handle all or part of the registry and claims processing functions for this state, as

the insurance commissioner may determine to be appropriate. The insurance commissioner is authorized to enter into agreements with other states and the international commission to treat and consider information submitted to them as submitted to this state for purpose of complying with this chapter. As part of any such agreement, the insurance commissioner may agree to reimburse any other state for expenses or costs incurred and such reimbursement shall be recovered by the insurance commissioner as an expense of operating the Holocaust insurance company registry and Holocaust survivor assistance office under subsections (4) and (5) of this section, and to accept reimbursement from any other state for services with regard to residents of such other state.

(8) A finding by the insurance commissioner that a claim subject to the provisions of this section should be paid shall be regarded by any court as highly persuasive evidence that such claim should be paid.

NEW SECTION. Sec. 7. PENALTIES. Any insurer that knowingly files information required by this chapter that is false shall be liable for a civil penalty not to exceed ten thousand dollars for each violation.

NEW SECTION. Sec. 8. SUSPENSION OF CERTIFICATE OF AUTHORITY FOR FAILURE TO COMPLY WITH CHAPTER. The insurance commissioner is authorized to suspend the certificate of authority to conduct insurance business in the state of Washington of any insurer that fails to comply with the requirements of this chapter by or after one hundred twenty days after the effective date of this act, until the time that the insurer complies with this chapter. Such suspension shall not affect or relieve the insurer from its obligations to service its existing insureds, and shall not permit the insurer to terminate its existing insureds, except pursuant to the terms of the insurance contract, but shall prohibit the insurer from writing new business in this state until the suspension is lifted by the insurance commissioner.

NEW SECTION. Sec. 9. COOPERATION WITH INTERNATIONAL COMMISSION. The insurance commissioner may suspend the application of this chapter to any insurer that is participating in the international commission process in good faith and is working through the international commission to resolve all outstanding claims with offers of fair settlements in a reasonable time frame. If, however, the international commission fails to establish a mechanism to accomplish identification, adjudication, and payment of insurance policy claims of Holocaust survivors or victims within a reasonable time, then all provisions of this chapter shall come into effect as to any such insurer. For purposes of this section, a reasonable time shall mean by January 1, 2000, or such later date as the insurance commissioner may establish by rule.

NEW SECTION. Sec. 10. PRIVATE RIGHTS OF ACTION PRESERVED; VENUE. Any Holocaust survivor, or heir or beneficiary of a Holocaust survivor or victim, who resides in this state and has a claim against an insurer arising out of an insurance policy or policies purchased or in effect in Europe before 1945 from

that insurer may bring a legal action against that insurer to recover on that claim in the superior court of the county in which any plaintiff resides, which court shall be vested with jurisdiction over that action.

NEW SECTION. Sec. 11. EXTENSION OF STATUTE OF LIMITATIONS. Any action brought by a Holocaust survivor or the heir or beneficiary of a Holocaust survivor or victim, seeking proceeds of the insurance policies issued or in effect before 1945 shall not be dismissed for failure to comply with the applicable statute of limitations, provided the action is commenced on or before December 31, 2010.

NEW SECTION. Sec. 12. ADOPTION OF RULES. The insurance commissioner may adopt rules to implement this chapter.

NEW SECTION. Sec. 13. REPORT TO LEGISLATURE. The insurance commissioner shall report to the legislature one year from the effective date of this act and annually thereafter on the implementation of this law and resolution of Holocaust claims.

NEW SECTION. Sec. 14. SHORT TITLE. This chapter shall be known and cited as the Holocaust victim insurance relief act of 1999.

NEW SECTION. Sec. 15. CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

NEW SECTION. Sec. 16. Sections 1 through 15, 17, and 18 of this act constitute a new chapter in Title 48 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 chapter expires December 31, 2010.

Passed the Senate March 9, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 9

[Engrossed Substitute House Bill 1963]
FLOOD PLAIN MANAGEMENT

AN ACT Relating to flood plain management; amending RCW 86.16.041; and declaring an emergency.

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

Sec. 1. RCW 86.16.041 and 1989 c 64 s 4 are each amended to read as follows:

(1) Beginning July 26, 1987, every county and incorporated city and town shall submit to the department of ecology any new flood plain management

ordinance or amendment to any existing flood plain management ordinance. Such ordinance or amendment shall take effect thirty days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

(2) The department may disapprove any ordinance or amendment submitted to it under subsection (1) of this section if it finds that an ordinance or amendment does not comply with any of the following:

(a) Restriction of land uses within designated floodways including the prohibition of construction or reconstruction, repair, or replacement of residential structures, except for: (i) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty percent determination. However, the floodway prohibition in this subsection does not apply to existing farmhouses in designated floodways that meet the provisions of subsection (3) of this section;

(b) The minimum requirements of the national flood insurance program; and

(c) The minimum state requirements adopted pursuant to RCW 86.16.031(8) that are applicable to the particular county, city, or town.

(3) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and which are located on lands designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 shall be permitted subject to the following:

(a) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(b) There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;

(c) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;

(d) A replacement farmhouse shall not exceed the total square footage of encroachment of the structure it is replacing;

(e) A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ninety days after occupancy of a new farmhouse;

(f) For substantial improvements, and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is one foot higher than the base flood elevation;

(g) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;

(h) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

(i) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

(4) Replacement home siting other than farmhouses must evaluate flood depth, flood velocity, and flood-related erosion, in order to identify a building site that offers the least risk of harm to life and property.

(5) For all other residential structures located in a designated floodway and damaged by flooding or flood-related erosion, the department is authorized to assess the risk of harm to life and property posed by the specific conditions of the floodway, and, based upon scientific analysis of depth, velocity, and flood-related erosion, may exercise best professional judgment in recommending to the permitting authority, repair, replacement, or relocation of such damaged structures. The effect of the department's recommendation to allow repair or replacement of a flood-damaged residence within the designated floodway is a waiver of the floodway prohibition.

(6) The department shall develop a rule or rule amendment guiding the assessment procedures and criteria described in subsections (3), (4), and (5) of this section no later than December 31, 1999.

(7) For the purposes of this section, "farmhouse" means a single-family dwelling locating on a farm site where resulting agricultural products are not produced for the primary consumption or use by the occupants and the farm owner.

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

Passed the House March 17, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 10

[Senate Bill 5015]

COMMUNITY MENTAL HEALTH SERVICES—TECHNICAL CORRECTIONS

AN ACT Relating to technical, clarifying, nonsubstantive amendments to community mental health services; amending RCW 71.24.025, 71.24.030, 71.24.035, 71.24.049, 71.24.110, 71.24.220, 71.24.300, 71.24.400, 71.24.405, 71.24.415, and 71.24.460; adding a new section to chapter 71.24 RCW; creating new sections; repealing RCW 71.24.410; and repealing 1989 c 205 s 23 (uncodified).

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

NEW SECTION. Sec. 1. The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as,

a substantive change in the service delivery system or funding of the community mental health services law.

Sec. 2. RCW 71.24.025 and 1997 c 112 s 38 are each amended to read as follows:

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means ~~((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 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(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))~~ a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that

result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a 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 service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from ~~((various))~~ public sources ~~((including: (a) Federal medicare, medicaid, or early periodic screening, diagnostic, and treatment programs; or (b) state funds from the division of mental health, division of children and family services, division of alcohol and substance abuse, or division of vocational rehabilitation of the department of social and health services))~~.

(8) "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.

(9) "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.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(12) "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 and other services provided by the state for the mentally ill.

(13) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and (17) of this section.

(14) "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.

(15) "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.

(16) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Acutely mentally ill adults and children(;;); (b) chronically mentally ill adults(;;); (c) severely emotionally disturbed children(;;); or (d) seriously disturbed adults determined solely by ((the)) a 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.

(17) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in ~~((RCW 71.05.020))~~ chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

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

(19) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (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)).~~

(20) "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. 3. RCW 71.24.030 and 1982 c 204 s 6 are each amended to read as follows:

The secretary is authorized(~~(; pursuant to this chapter and the rules promulgated to effectuate its purposes;))~~ to make grants to counties or combinations of counties in the establishment and operation of community mental health programs.

Sec. 4. RCW 71.24.035 and 1998 c 245 s 137 are each amended to read as follows:

- (1) The department is designated as the state mental health authority.
- (2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.
- (3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.
- (4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.
- (5) The secretary shall:
 - (a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;
 - (b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:
 - (A) Outpatient services;

- (B) Emergency care services for twenty-four hours per day;
 - (C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;
 - (D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;
 - (E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;
 - (F) Consultation and education services; and
 - (G) Community support services;
- (c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to section 5 of this act including, but not limited to:
- (i) Licensed service providers;
 - (ii) Regional support networks; and
 - (iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;
- (d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;
- (e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;
- (f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;
- (g) Develop and maintain an information system to be used by the state, counties, and regional support networks (~~when they are established which shall~~) that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440(~~—The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter~~);

- (h) License service providers who meet state minimum standards;
- (i) Certify regional support networks that meet state minimum standards;
- (j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; ~~((and))~~
- (k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;
- (l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter; and
- (m) ~~((Prior to September 1, 1989,))~~ Adopt such rules as are necessary to implement the department's responsibilities under this chapter ~~((pursuant to chapter 34.05 RCW; PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and~~
~~— (n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals)).~~
- (6) The secretary shall use available resources ~~((appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used))~~ only for regional support networks.
- (7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.
- (8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law((:)); (b) applicable rules and regulations((,- or)); (c) applicable standards((:)); or ~~((failure to meet the))~~ (d) state minimum standards ~~((established pursuant to this section)).~~
- (9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.
- (10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or

employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

~~(11) (The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.~~

~~—(12))~~ Notwithstanding the existence or pursuit of any other remedy, the secretary may ~~((; in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain))~~ file an action ~~((in the name of the state))~~ for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

~~((+3))~~ (12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes ~~((and intent of this))~~ of these chapters ~~((and chapter 71.05 RCW))~~.

~~((+4))~~ (13)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed children, and seriously disturbed ~~((as defined in chapter 71.24 RCW))~~. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as ~~((defined))~~ set forth in subsection ~~((+5))~~ (5)(b) of this section. These factors shall include the population concentrations resulting from commitments under ~~((the involuntary treatment act,))~~ chapters 71.05 and 71.34 RCW~~((;))~~ to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

~~((+5) To supersede duties assigned under subsection (5)(a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, or severely emotionally disturbed, the secretary shall encourage the development of regional support networks as follows:~~

~~—By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.~~

~~—All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1st of any year thereafter shall submit their intentions by October 30th of the previous year along with preliminary plans.))~~

(14) The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05, 71.34, and 71.24 RCW ~~((on July 1, 1995))~~. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The ~~((implementation of))~~ regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

~~((16) By January 1, 1992, the secretary shall provide available resources to regional support networks to operate freestanding evaluation and treatment facilities or for regional support networks to contract with local hospitals to assure access for regional support network patients.~~

~~—(17))~~ (15) The secretary shall:

(a) Disburse ~~((the first))~~ funds for the regional support networks ~~((that are ready to begin implementation by January 1, 1990, or))~~ within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks ~~((to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995))~~. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) ~~((By July 1, 1993;))~~ Allocate one hundred percent of available resources to the regional support networks ~~((created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1991, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993;))~~ in accordance with subsection ~~((14))~~ (13) of this section.

~~(d) ((By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.~~

~~—(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.~~

—(f)) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

~~((g))~~ (e) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

~~((h))~~ (f) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

~~((i) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.~~

~~(18))~~ (16) The department ~~((of social and health services))~~, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

~~((19))~~ (17) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health.

NEW SECTION. Sec. 5. A new section is added to chapter 71.24 RCW to read as follows:

(1) The secretary shall by rule establish state minimum standards for licensed service providers and services.

(2) Minimum standards for licensed service providers shall, at a minimum, establish: 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.

(3) Minimum standards for residential services shall be based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum standards for residential services shall be developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. The minimum standards shall encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and shall not unnecessarily restrict programming flexibility.

(4) Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers.

Sec. 6. RCW 71.24.049 and 1986 c 274 s 6 are each amended to read as follows:

By January ~~((1, 1987, and))~~ 1st of each odd-numbered year ~~((thereafter))~~, the county authority shall identify: (1) The number of children in each priority group, as defined by this chapter, who are receiving mental health services funded in part or in whole under this chapter, (2) the amount of funds under this chapter used for children's mental health services, (3) an estimate of the number of unserved children in each priority group, and (4) the estimated cost of serving these additional children and their families.

Sec. 7. RCW 71.24.110 and 1982 c 204 s 8 are each amended to read as follows:

~~((Such))~~ An agreement for the establishment of a community mental health program under RCW 71.24.100 may also provide:

(1) For the joint supervision or operation of services and facilities, or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties; and

(2) For such other matters as are necessary or proper to effectuate the purposes of this chapter.

Sec. 8. RCW 71.24.220 and 1982 c 204 s 12 are each amended to read as follows:

The secretary may withhold state grants in whole or in part for any community mental health program in the event of a failure to comply with this chapter or ~~((regulations made))~~ the related rules adopted by the department ~~((pursuant thereto relating to the community mental health program or the administration thereof)).~~

Sec. 9. RCW 71.24.300 and 1994 c 204 s 2 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)) persons currently confined at, or under the supervision of, a state mental hospital pursuant to chapter 10.77 RCW, 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))~~ (6). ~~((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.

Sec. 10. RCW 71.24.400 and 1995 c 96 s 1 are each amended to read as follows:

The legislature finds that the current complex set of federal, state, and local rules and regulations, audited and administered at multiple levels, which affect the community mental health service delivery system, focus primarily on the process of providing mental health services and do not sufficiently address consumer and system outcomes. ~~((To this extent,))~~ The legislature finds that the ~~((intent of))~~ department and the community mental health service delivery system must make ongoing efforts to achieve the purposes set forth in RCW 71.24.015 related to reduced administrative layering, duplication, and reduced administrative costs ~~((need much more aggressive action))~~.

Sec. 11. RCW 71.24.405 and 1995 c 96 s 2 are each amended to read as follows:

The department ~~((of social and health services))~~ shall establish a single comprehensive and collaborative project within regional support networks and with local mental health service providers aimed at creating innovative and streamlined community mental health service delivery systems, in order to carry out the

purposes set forth in RCW 71.24.400 and to capture the diversity of the community mental health service delivery system.

The project must accomplish the following:

(1) Identification, review, and cataloging of all rules, regulations, duplicative administrative and monitoring functions, and other requirements that currently lead to inefficiencies in the community mental health service delivery system and, if possible, eliminate the requirements;

(2) The systematic and incremental development of a single system of accountability for all federal, state, and local funds provided to the community mental health service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;

(3) The elimination of process regulations and related contract and reporting requirements. In place of the regulations and requirements, a set of outcomes for mental health adult and children clients according to chapter 71.24 RCW must be used to measure the performance of mental health service providers and regional support networks. Such outcomes shall focus on stabilizing out-of-home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies;

(4) Evaluation of the feasibility of contractual agreements between the department of social and health services and regional support networks and mental health service providers that link financial incentives to the success or failure of mental health service providers and regional support networks to meet outcomes established for mental health service clients;

(5) The involvement of mental health consumers and their representatives in the pilot projects. Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients and other related aspects of the pilot projects; and

(6) An independent evaluation component to measure the success of the projects.

Sec. 12. RCW 71.24.415 and 1995 c 96 s 3 are each amended to read as follows:

To carry out the purposes specified in RCW 71.24.400, the department (~~of social and health services~~) is encouraged to utilize its authority to (~~immediately~~) eliminate any unnecessary rules, regulations, standards, or contracts, to immediately eliminate duplication of audits or any other unnecessarily duplicated functions, and to seek any waivers of federal or state rules or regulations necessary to achieve the purpose of streamlining the community mental health service delivery system and infusing it with incentives that reward efficiency, positive outcomes for clients, and quality services.

Sec. 13. RCW 71.24.460 and 1997 c 342 s 4 are each amended to read as follows:

The department, in collaboration with the department of corrections and the oversight committee created in RCW 71.24.455, shall track outcomes and submit to the legislature ~~((a report of))~~ annual reports regarding services and outcomes ~~((by December 1, 1998, and annually thereafter as may be necessary))~~. The reports shall include the following: (1) A statistical analysis regarding the reoffense and reinstitutionalization rate by the enrollees in the program set forth in RCW 71.24.455; (2) a quantitative description of the services provided in the program set forth in RCW 71.24.455; and (3) recommendations for any needed modifications in the services and funding levels to increase the effectiveness of the program set forth in RCW 71.24.455. By December 1, 2003, the department shall certify the reoffense rate for enrollees in the program authorized by RCW 71.24.455 to the office of financial management and the appropriate legislative committees. If the reoffense rate exceeds fifteen percent, the authorization for the department to conduct the program under RCW 71.24.455 is terminated on January 1, 2004.

NEW SECTION. **Sec. 14.** The code reviser shall alphabetize the definitions in RCW 71.24.025 and correct any cross-references.

NEW SECTION. **Sec. 15.** 1989 c 205 s 23 (uncodified) is repealed.

NEW SECTION. **Sec. 16.** RCW 71.24.410 and 1998 c 245 s 138 & 1994 c 259 s 3 are each repealed.

Passed the Senate March 3, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 11

[Substitute Senate Bill 5046]

MENTAL HEALTH EVALUATIONS—COURT DISAGREEMENT PROCEDURES

AN ACT Relating to creating an additional hearing procedure when the court disagrees with the mental health evaluation conducted by a professional person; amending RCW 71.05.235; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 71.05.235 and 1998 c 297 s 18 are each amended to read as follows:

(1) If an individual is referred to a county designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the county designated mental health professional shall examine the individual within forty-eight hours. If the county designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the county designated mental health professional not later than the next judicial day.

At the hearing the superior court shall review the determination of the county designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Immediately following completion of the evaluation, the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the court. The superior court shall review the recommendation not later than the next judicial day. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

(3) If a county designated mental health professional or the professional person and prosecuting attorney or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.250.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 1, 1999, or upon approval by the governor, whichever occurs later.

Passed the Senate February 17, 1999.
Passed the House April 6, 1999.
Approved by the Governor April 15, 1999.
Filed in Office of Secretary of State April 15, 1999.

CHAPTER 12

[Substitute Senate Bill 5047]

MENTAL HEALTH PROFESSIONALS—CONFIDENTIALITY

AN ACT Relating to the sharing of information received by mental health professionals performing services under chapter 10.77 RCW; and amending RCW 71.05.390.

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

Sec. 1. RCW 71.05.390 and 1998 c 297 s 22 are each amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; ~~((or))~~ (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: **PROVIDED**, That the secretary ~~((of social and health services))~~ adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited

to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, , agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the

best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(12) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(13) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(14) To the department of health of the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Passed the Senate February 17, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 13

[Substitute Senate Bill 5048]

TECHNICAL CORRECTIONS TO CHAPTERS 10.77 AND 71.05 RCW

AN ACT Relating to technical corrections to chapters 10.77 and 71.05 RCW; amending RCW 10.77.010, 10.77.240, 10.77.940, 71.05.020, 71.05.245, 71.05.320, 71.05.425, and 71.05.940; reenacting RCW 71.05.640, 71.05.670, 71.05.680, and 71.05.690; and creating a new section.

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

NEW SECTION. Sec. 1. The purpose of this act is to make technical nonsubstantive changes to chapters 10.77 and 71.05 RCW. No provision of this act shall be construed as a substantive change in the provisions dealing with persons charged with crimes who are subject to evaluation under chapter 10.77 or 71.05 RCW.

Sec. 2. RCW 10.77.010 and 1998 c 297 s 29 are each amended to read as follows:

As used in this chapter:

(1) "County designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(2) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

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

(4) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(5) "Developmental disability" means the condition defined in RCW 71A.10.020(~~((2))~~) (3).

(6) "~~(Expert or)~~ Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW;
or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(7) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(8) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

(9) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(10) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(11) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(12) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(13) "Secretary" means the secretary of the department of social and health services or his or her designee.

(14) "Treatment" means any currently standardized medical or mental health procedure including medication.

(15) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person.

Sec. 3. RCW 10.77.240 and 1973 1st ex.s. c 117 s 24 are each amended to read as follows:

Nothing in this chapter shall prohibit a person presently committed from exercising a right presently available to him or her for obtaining release from confinement, including the right to petition for a writ of habeas corpus.

Sec. 4. RCW 10.77.940 and 1989 c 420 s 17 are each amended to read as follows:

The provisions of ~~((this act))~~ chapter 420, Laws of 1989 shall apply equally to persons ~~((presently))~~ in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities.

Sec. 5. RCW 71.05.020 and 1998 c 297 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(3) "County designated mental health professional" means a mental health professional appointed by the county to perform the duties specified in this chapter;

(4) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from a facility providing involuntary care and treatment;

(5) "Department" means the department of social and health services;

(6) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(7) "Developmental disability" means that condition defined in RCW 71A.10.020~~((2))~~ (3);

(8) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(9) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(10) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct;

(11) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(12) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(13) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(14) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) 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 oneself; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts;

(15) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(16) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(17) "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;

(18) "Private agency" means any person, partnership, corporation, or association that is not (~~defined as~~) a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(19) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(20) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(21) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(22) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department

or ward conducted for, the care and treatment of persons who are mentally ill ((or deranged)); if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(23) "Resource management services" has the meaning given in chapter 71.24 RCW;

(24) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(25) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(26) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

Sec. 6. RCW 71.05.245 and 1998 c 297 s 14 are each amended to read as follows:

In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current hearing.

Sec. 7. RCW 71.05.320 and 1997 c 112 s 26 are each amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department. If the committed person is developmentally disabled and has been determined incompetent pursuant to RCW 10.77.090(~~(3)~~) (4), and the best interests of the person or others will not be served by a less-restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for one hundred eighty-day treatment by the department. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically

reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. An order for treatment less restrictive than involuntary detention may include conditions, and if such conditions are not adhered to, the designated mental health professional or developmental disabilities professional may order the person apprehended under the terms and conditions of RCW 71.05.340.

If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(2) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional or developmental disabilities professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to reprove that element. Such new petition for involuntary treatment shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this subsection. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(3) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length.

Sec. 8. RCW 71.05.425 and 1994 c 129 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 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))~~) (4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(~~((3))~~) (4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(~~((3))~~) (4) 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))~~) (4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person 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))~~) (4) 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.

Sec. 9. RCW 71.05.640 and 1989 c 205 s 14 are each reenacted to read as follows:

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during admission or

commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in RCW 71.05.610 through 71.05.690.

Sec. 10. RCW 71.05.670 and 1990 c 3 s 115 are each reenacted to read as follows:

Except as provided in RCW 4.24.550, any person, including the state or any political subdivision of the state, violating RCW 71.05.610 through 71.05.690 shall be subject to the provisions of RCW 71.05.440.

Sec. 11. RCW 71.05.680 and 1989 c 205 s 18 are each reenacted to read as follows:

Any person who requests or obtains confidential information pursuant to RCW 71.05.610 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor.

Sec. 12. RCW 71.05.690 and 1989 c 205 s 19 are each reenacted to read as follows:

The department shall adopt rules to implement RCW 71.05.610 through 71.05.680.

Sec. 13. RCW 71.05.940 and 1989 c 420 s 18 are each amended to read as follows:

The provisions of (~~this act~~) chapter 420, Laws of 1989 shall apply equally to persons (~~presently~~) in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities.

Passed the Senate March 9, 1999.

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Filed in Office of Secretary of State April 15, 1999.

CHAPTER 14

[Substitute Senate Bill 5058]

STATE-CHARTERED FINANCIAL INSTITUTIONS

AN ACT Relating to the establishment and authority to conduct the business of state-chartered financial institutions; amending RCW 30.08.020, 30.08.080, 32.04.020, 32.04.082, 32.08.140, 32.08.142, 32.08.146, 32.12.020, 32.12.090, 32.16.040, 32.16.050, 32.20.010, 32.20.020, 32.20.330, 32.20.400, 32.20.445, 32.32.500, 32.32.520, 32.34.010, 32.34.020, and 32.34.060; reenacting and amending RCW 32.04.080 and 32.04.085; adding a new section to chapter 32.20 RCW; adding a new section to chapter 32.34 RCW; adding a new chapter to Title 32 RCW; and repealing RCW 32.20.160.

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

NEW SECTION. **Sec. 1.** When authorized by the director, one or more natural persons, citizens of the United States, may incorporate a stock savings bank in the manner prescribed under this chapter. No stock savings bank may 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 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 stock savings bank, and other factors deemed pertinent by the director. Before commencing business, each stock savings bank shall 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 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.

NEW SECTION. **Sec. 2.** Persons desiring to incorporate a stock savings bank shall file with the director a notice of their intention to organize a stock savings bank in such form and containing such information as the director shall require, together with proposed articles of incorporation, which shall be submitted for examination to the director at his or her office.

The proposed articles of incorporation shall state:

- (1) The name of the stock savings bank;
- (2) The city, village, or locality and county where the head office of the corporation is to be located;
- (3) The nature of its business, that of a stock savings bank;
- (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 stock savings bank's board of directors from time to time with the approval of the director;

(7) Any provision granting the shareholders the preemptive right to acquire additional shares of the stock savings 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 affairs of the corporation, including any provision restricting the transfer of shares, any provision which under this title is required or permitted to be set forth in the bylaws, and any provision permitted by RCW 23B.17.030;

(9) Any provision the incorporators elect to so set forth, not inconsistent with law or the purposes for which the stock savings bank is organized, or any provision limiting any of the powers granted in this title.

It is not 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.

NEW SECTION. Sec. 3. When the notice of intention to organize and proposed articles of incorporation complying with section 2 of this act have been received by the director, together with the fees required by law, 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 the articles are such as to command confidence and warrant belief that the business of the proposed stock savings bank will be honestly and efficiently conducted in accordance with the intent and purpose of this title, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed stock savings bank, and whether the proposed stock savings bank is being formed for other than the legitimate objects covered by this title.

NEW SECTION. Sec. 4. After the director is satisfied 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, the director shall notify the incorporators to file executed articles of incorporation with the director in triplicate. Unless the 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 the director within ten days of such notice. Within thirty days after the receipt of such articles of incorporation, the director shall endorse upon each of the copies, over his or her official signature, the word "approved," or the word "refused," with the date of such endorsement. In case of refusal the director shall immediately return one of the copies, 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.

NEW SECTION. Sec. 5. In case of approval the director shall immediately give notice to the proposed incorporators and file one of the copies of the articles of incorporation in his or her own office, and shall transmit another copy to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the fees as are required for filing and recording other articles of incorporation, the secretary of state shall file and record the articles. Upon the filing of articles of incorporation approved by the director with the secretary of state, all persons named in the articles 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.

NEW SECTION. Sec. 6. A stock savings bank amending its articles of incorporation shall deliver articles of amendment to the director for filing as required for articles of incorporation. The articles of amendment shall set forth:

- (1) The name of the stock savings bank;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If the amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
- (5) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 32.32.490.

NEW SECTION. Sec. 7. Before any stock savings bank is authorized to do business, and within ninety days after approval of the articles of incorporation or such other time as the director may allow, it shall furnish proof satisfactory to the director that such corporation has a paid-in capital in the amount determined by the 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 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 named corporation has complied with the requirements of law and that it is authorized to transact the business of a stock savings bank. However, the director may make his or her issuance of the certificate to a stock savings bank 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 director to the corporation and one of the other two shall be filed by the director in the office of the secretary of state and shall be attached to the articles of incorporation. However, if the issuance of the certificate is made conditional upon the granting of deposit insurance by the federal deposit insurance corporation, the director shall not transmit or file the certificate until such condition is satisfied.

NEW SECTION. Sec. 8. Every corporation authorized by the laws of this state to do business as a stock savings bank, 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 director, shall forfeit its rights and privileges as such corporation, which fact the 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. However, the 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.

NEW SECTION. Sec. 9. At any time not less than one year prior to the expiration of the time of the existence of any mutual savings bank or stock savings bank, it may by written application to the 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 director for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the director shall make such investigation of the applicant as he or she deems necessary. If 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 director for legal cause and finally wound up by him or her. Otherwise 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 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 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 mutual savings bank or stock savings bank fail to continue its existence in the manner provided and be not previously dissolved, the director shall at the end of its original term of existence immediately take possession of the corporation and wind up its affairs in the same manner as in the case of insolvency.

NEW SECTION. Sec. 10. (1) Shares of a stock savings bank may, but need not be, represented by certificates. Unless this title expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates. At a minimum, each share certificate must state the information required to be stated and must be signed as provided in RCW 23B.06.250 and/or 23B.06.270 for corporations.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a stock savings bank may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the stock savings bank.

(3) Within a reasonable time after the issue or transfer of shares without certificates, the stock savings bank shall send the shareholder a written statement of the information required to be stated on certificates under subsection (1) of this section.

Sec. 11. RCW 30.08.020 and 1995 c 134 s 3 are each amended to read as follows:

Persons desiring to incorporate a bank or trust company shall file with the director a notice of their intention to organize a bank or trust company in such form and containing such information as the director shall prescribe by rule, together with proposed articles of incorporation, which shall be submitted for examination to the 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 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 affairs of the corporation, including any provision restricting the transfer of shares, any provision which under this title is required or permitted to be set forth in the bylaws, and any provision permitted by RCW 23B.17.030.

(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.

Sec. 12. RCW 30.08.080 and 1994 c 92 s 49 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(;) or trust company (~~or mutual savings bank~~), it may by written application to the 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 director for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the director shall make such investigation of the applicant as he or she deems necessary. If 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 director for legal cause and finally wound up by him or her. Otherwise 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 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 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(~~(;)~~) or trust company (~~(or mutual savings bank)~~) fail to continue its existence in the manner herein provided and be not previously dissolved, the 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. 13. RCW 32.04.020 and 1997 c 101 s 5 are each amended to read as follows:

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

(1) The use of the term "savings bank" or "mutual savings bank" refers to ~~((mutual))~~ savings banks ~~((and))~~ organized under chapter 32.08 or chapter 32.09 RCW (sections 1 through 10 of this act) or converted ((mutual savings banks only)) under chapter 32.32 or 33.44 RCW.

(2) 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.

(3) The use of the term "director" refers to the director of financial institutions.

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

Sec. 14. RCW 32.04.080 and 1994 c 256 s 95 and 1994 c 92 s 297 are each reenacted and amended to read as follows:

A mutual savings bank may provide for pensions or retirement benefits for its disabled or superannuated employees or health insurance benefits for its employees and may pay a part or all of the cost of providing such pensions or benefits in accordance with a plan adopted by its board of trustees or a board committee, none of whose members is an officer of the bank. The board of trustees of a savings bank or such a committee of the board may set aside from current earnings reserves in such amounts as the board or the committee shall deem wise to provide for the payment of future pensions or benefits.

Sec. 15. RCW 32.04.082 and 1957 c 80 s 7 are each amended to read as follows:

With respect to pension payments or retirement or health insurance benefits payable by a mutual savings bank to any employee heretofore or hereafter retired,

such bank may waive all or any part of any offsets thereto attributable to social security benefits receivable by such employee.

Sec. 16. RCW 32.04.085 and 1994 c 256 s 96 and 1994 c 92 s 298 are each reenacted and amended to read as follows:

Any pension payment or retirement or health insurance 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. The board of trustees of a savings bank or a board committee, none of whose members is an officer of the bank, may set aside from current earnings, reserves in such amounts as the board or the committee shall deem appropriate to provide for the payments of future supplemental payments.

Sec. 17. RCW 32.08.140 and 1996 c 2 s 23 are each amended to read as follows:

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

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

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

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

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

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

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution, policy, or other governing document adopted by ~~((a vote of a majority of))~~ its board of trustees ~~((duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee))~~, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this

subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

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

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

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

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

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

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

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

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

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

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

(16) To exercise the powers and authorities conferred by RCW 30.04.215(~~;~~ if upon a finding by the director that a determination made by a regulatory or judicial authority of competent jurisdiction will result in the imposition, on a transaction subject to RCW 32.32.500, of the concentration limits specified in RCW 30.49.125(6), notwithstanding the concentration limits specifically applied by RCW 32.32.500(3)).

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

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

(19) To exercise the powers and authorities that may be exercised by an insured state bank in compliance with 12 U.S.C. Sec. 1831a.

Sec. 18. RCW 32.08.142 and 1996 c 2 s 24 are each amended to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that a federal mutual savings bank had on July 28, 1985, or a subsequent date not later than ~~((June 6, 1996))~~ the effective date of this act. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

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

Sec. 19. RCW 32.08.146 and 1996 c 2 s 25 are each amended to read as follows:

A mutual savings bank may exercise the powers and authorities granted, after ~~((June 6, 1996))~~ the effective date of this act, to federal mutual savings banks or their successors under federal law, only if the director finds that the exercise of such powers and authorities:

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

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

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

Sec. 20. RCW 32.12.020 and 1996 c 2 s 27 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. These regulations shall be available to depositors upon request, and shall be posted in a conspicuous place in the principal office and each branch in this state or, if the regulations are not so posted, a description of changes in the regulations after an account is opened shall be mailed to depositors pursuant to 12 U.S.C. Sec. 4305(c) or otherwise. All such rules and regulations, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

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

~~(2) ((Except as provided in subdivisions (3), (4), and (5) of this section)) The savings bank ((shall not)) may pay ((any)) dividend((:)) or interest, or repay a deposit((:)) or portion thereof, ((or)) upon receipt of information in written, oral, visual, electronic, or other form satisfactory to such bank, that the recipient is entitled to receipt, and may pay any check drawn upon it by a depositor ((unless the certificate of deposit is produced or bears a legend stating it may be paid without production, or the passbook of the depositor is produced and the proper entry is made therein, at the time of the payment:~~

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

~~— (4) The board of trustees of any such bank may by its bylaws provide for making payments to depositors at their request, of dividends or interest payable on any deposit, without requiring the production of the passbook or certificate of deposit of the depositor, and any payment made in accordance with any such request and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such request prior to receipt by such savings bank of notice in writing not to pay such sums in accordance with the terms of such request:~~

~~— (5) The issuance of a passbook or certificate of deposit may be omitted for any account if an adequate record thereof is maintained, in lieu of a passbook or certificate of deposit, on which shall be entered deposits, withdrawals, and interest~~

credited: ~~PROVIDED, That in any event a passbook shall be issued upon the request of any passbook account depositor).~~

Sec. 21. RCW 32.12.090 and 1994 c 256 s 101 are each amended to read as follows:

(1) Every savings bank shall regulate the rate of interest upon the amounts to the credit of depositors therewith, in such manner that depositors shall receive as nearly as may be all the earnings of the bank after transferring the amount required by RCW 32.08.120 and such further amounts as its trustees may deem it expedient and for the security of the depositors to transfer to the guaranty fund, which to the amount of ten percent of the amount due its depositors the trustees shall gradually accumulate and hold. Such trustees may also deduct from its net earnings, and carry as reserves for losses, or other contingencies, or as undivided profits, such additional sums as they may deem wise.

(2) Every savings bank may classify its depositors according to the local market, character, amount, regularity, or duration of their dealings with the savings bank, and may regulate the interest in such manner that each depositor shall receive the same ratable portion of interest as all others of his or her class.

(3) Unimpaired contributions to the initial guaranty fund and to the expense fund, made by the incorporators or trustees of a savings bank, shall be entitled to have dividends apportioned thereon, which may be credited and paid to such incorporators or trustees.

Whenever the guaranty fund of any savings bank is sufficiently large to permit the return of such contributions, the contributors may receive interest thereon not theretofore credited or paid at the same rate paid to depositors.

(4) A savings bank may pay interest on deposits at such rates as its board or a committee or officer designated by the board shall from time to time determine.

(5) The trustees of any savings banks, other than a stock savings bank, whose undivided profits and guaranty fund, determined in the manner prescribed in RCW 32.12.070, amount to more than twenty-five percent of the amount due its depositors, shall at least once in three years divide equitably the accumulation beyond such twenty-five percent as an extra dividend to depositors in excess of the regular dividend authorized.

(6) A notice posted conspicuously in a savings bank of a change in the rate of interest shall be equivalent to a personal notice.

Sec. 22. RCW 32.16.040 and 1985 c 56 s 9 are each amended to read as follows:

~~((+))~~ A quorum at any regular or special or adjourned meeting of the board of trustees shall consist of not less than five of whom the chief executive officer shall be one, except when he or she is prevented from attending by sickness or other unavoidable detention, when he or she may be represented in forming a quorum by such other officer as the board may designate; but less than a quorum shall have power to adjourn from time to time until the next regular meeting. However, a savings bank may adopt procedures which provide that, in the event

of a national emergency, any trustee may act on behalf of the board to continue the operations of the savings bank. For purposes of this subsection, a national emergency is an emergency declared by the president of the United States or the person performing the president's functions, or a war, or natural disaster.

Regular meetings of the board of trustees shall be held as established from time to time by the board, not less than ~~((nine))~~ six times during each year.

~~((2) The board of trustees shall by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to the trustees at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of the purchases and sales of securities, and of loans, made since the last regular meeting of the board. The statement shall be in such form as the board from time to time shall determine and there may be omitted from the statement such purchases and sales of securities and such loans as determined by the board.))~~

Sec. 23. RCW 32.16.050 and 1985 c 56 s 10 are each amended to read as follows:

(1) A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for services as trustee, except as provided in this section.

(2) A trustee may receive, by affirmative vote of a majority of all the trustees, reasonable compensation for (a) attendance at meetings of the board of trustees; (b) service as an officer of the savings bank, provided his or her duties as officer require and receive his or her regular and faithful attendance at the savings bank; (c) service in appraising real property for the savings bank; and (d) service as a member of a committee of the board of trustees: PROVIDED, That a trustee receiving compensation for service as an officer pursuant to (b) shall not receive any additional compensation for service under (a), (c), or (d).

(3) An attorney for a savings bank, although he or she is a trustee thereof, may receive a reasonable compensation for his or her professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the bank requires the borrowers to pay all expenses of searches, examinations, and certificates of title, including the drawing, perfecting, and recording of papers, such attorney may collect of the borrower and retain for his or her own use the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

(4) All incentive compensation, bonus, or supplemental compensation plans for officers and employees of a savings bank shall be approved by a majority of nonofficer trustees of the savings bank or approved by a committee of not less than three trustees, none of whom shall be officers of the savings bank. No such plan shall permit any officer or employee of a savings bank who has or exercises final authority with regard to any loan or investment to receive any commission on such loan or investment.

(5) If an officer or attorney of a savings bank receives, on any loan made by the bank, any commission which he or she is not authorized by this section to

retain for his or her own use, he or she shall immediately pay the same over to the savings bank.

Sec. 24. RCW 32.20.010 and 1977 ex.s. c 241 s 2 are each amended to read as follows:

The words "mutual savings bank" and "savings bank," whenever used in this chapter, shall mean a mutual savings bank organized and existing under the laws of the state of Washington.

The words "its funds," whenever used in this chapter, shall mean and include moneys deposited with or borrowed by a mutual savings bank, sums credited to the guaranty fund of a mutual savings bank, and the income derived from such deposits or fund, or both, and the principal balance of any outstanding capital notes, and capital debentures.

Sec. 25. RCW 32.20.020 and 1955 c 13 s 32.20.020 are each amended to read as follows:

A mutual savings bank shall have the power to invest its funds in the manner ~~((hereinafter))~~ set forth in chapter 32.08 RCW and in this chapter ~~((specified))~~ and not otherwise.

Sec. 26. RCW 32.20.330 and 1985 c 56 s 13 are each amended to read as follows:

A mutual savings bank may invest in loans to sole proprietorships, partnerships, limited liability companies, corporations, or other entities, or in preferred stock(;) or ((m)) discounted or other interest bearing obligations issued, guaranteed, or assumed by limited liability companies or corporations commonly accepted as industrial corporations or engaged in communications, transportation, agriculture, furnishing utility ((or telephone)) professional services, manufacturing, construction, mining, fishing, processing or merchandising of goods, food, or information, banking, or commercial or consumer financing, doing business or incorporated under the laws of the United States, or any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof, subject to the following conditions:

(1) Not more than two percent of ((said)) the bank's funds shall be invested, pursuant to this section, in ((securities of any one such corporation, pursuant to this section)) the aggregate of loans to and preferred stock and obligations of any person, as defined in RCW 32.32.228(1)(c), and such person's affiliates, as defined in RCW 32.32.025(1), incorporating the definition of control in RCW 32.32.025(8).

(2) Such loans or securities shall be prudent investments.

(3) Pursuant to this section, the total amount a savings bank may invest shall not exceed fifty percent of its funds, and not more than fifteen percent of the bank's funds may be invested in such loans to or securities of any industry.

NEW SECTION. Sec. 27. A new section is added to chapter 32.20 RCW to read as follows:

A mutual savings bank may invest in loans or securities that are qualified thrift investments for a savings association subject to the limits specified in 12 U.S.C. Sec. 1467a(m).

Sec. 28. RCW 32.20.400 and 1981 c 86 s 7 are each amended to read as follows:

A mutual savings bank may invest not to exceed twenty percent of its funds pursuant to this section in loans for home or property repairs, alterations, appliances, improvements, or additions, home furnishings, for installation of underground utilities, for educational purposes, or for nonbusiness family purposes: PROVIDED, That the application therefor shall state that the proceeds are to be used for one of the above purposes.

Sec. 29. RCW 32.20.445 and 1989 c 180 s 8 are each amended to read as follows:

A savings bank may invest its funds in the stock and other securities and obligations of a savings or banking institution or holding company thereof if the deposits of the savings or banking institution are insured by the federal deposit insurance corporation (~~(the federal savings and loan insurance corporation,)~~) or any other federal instrumentalities established to carry on substantially the same functions as such corporations (~~(PROVIDED, That the savings bank shall own not less than fifty-one percent of the outstanding stock having voting power))~~).

Sec. 30. RCW 32.32.500 and 1996 c 2 s 28 are each amended to read as follows:

(1) A savings bank may merge with, consolidate with, convert into, acquire a branch or branches of, or sell its branch or branches to any (~~other financial institution chartered or authorized to do business in this state under Titles 30, 32, or 33 RCW or under the federal laws relating to~~) depository institutions as defined in 12 U.S.C. Sec. 461 or financial institution chartered or authorized to do business under the laws of any (~~other~~) state, territory, province, or other jurisdiction of the United States or another nation, or to a holding company or subsidiary thereof, subject to the approval of (a) the director of financial institutions if the surviving institution is one chartered under Title 30, 31, 32, or 33 RCW, or (b) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository institution that is federally chartered under the laws of the United States, the federal regulatory authority having jurisdiction over the transaction under the applicable laws, or (c) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of another state or territory of the United States, the regulatory authority having jurisdiction over that transaction under the applicable laws, or (d) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of a nation other than the United States or of a state, territory, province, or other jurisdiction of such nation, the director of financial institutions, or (e) if

the surviving institution is to be a bank holding company, the Federal Reserve Board or its successor under 12 U.S.C. Sec. 1842 (a) and (d).

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

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

Sec. 31. RCW 32.32.520 and 1981 c 85 s 103 are each amended to read as follows:

The "funds" of a converted savings bank, as the term is used in Title 32 RCW, shall mean deposits, sums credited to the liquidation account, capital stock, the principal balance of any outstanding capital notes, capital debentures, borrowings, undivided profits and income derived from the foregoing or the proceeds of the foregoing as listed in this section.

Sec. 32. RCW 32.34.010 and 1994 c 92 s 406 are each amended to read as follows:

(1) A domestic savings bank formed or converted under this title may convert itself into a state or federal credit union or a federal mutual or stock savings bank, national bank or, within the meaning of chapter 30.49 RCW, a resulting state bank. The conversion shall be effected, notwithstanding any restrictions, limitations, and requirements of law:

(a) In the case of the conversion of a mutual savings bank without capital stock to a state or federal credit union or a federal 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 the conversion of a stock savings bank to a federal stock savings bank, national bank or, within the meaning of chapter 30.49 RCW, a resulting state 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;

(c) In the case of the conversion of a savings bank to a federal credit union, federal savings bank, or national bank, in compliance with the procedure, if any, prescribed by the laws of the United States.

(2) Notice of the meeting, stating the purpose thereof, shall be given the 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 director.

(3) Upon consummation of the conversion, the successor credit union, federal savings bank, national bank, or resulting state bank shall succeed to all right, title, and interest of the mutual or stock bank, respectively, 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. 33. RCW 32.34.020 and 1994 c 92 s 407 are each amended to read as follows:

(1) A federal savings bank, the home office of which is located in this state, a national bank, the head office of which is located in this state, or a state commercial bank incorporated under chapter 30.08 RCW or resulting under chapter 30.49 RCW may convert itself into a domestic savings bank under this title upon approval by the director. For any such conversion, the federal savings bank, national bank, or state commercial bank shall proceed as provided in this chapter for the conversion of a domestic savings bank into a federal savings bank, national bank, or resulting bank under chapter 30.49 RCW. 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, national bank, or a state bank.

NEW SECTION. Sec. 34. A new section is added to chapter 32.34 RCW to read as follows:

(1) The conversion of a stock savings bank to a savings bank without capital stock requires the affirmative vote or written consent of two-thirds of the directors of the savings bank and requires the affirmative vote of two-thirds of the outstanding stock of the savings bank. The conversion shall proceed as prescribed in chapter 32.32 RCW subject to the authority of the director under RCW 32.32.010 and is complete upon the payment into the guaranty fund of the resulting savings bank without capital stock of any surplus remaining after satisfaction of all debts and liabilities of the savings bank, including but not limited to liabilities to dissenting shareholders under RCW 32.34.060.

(2) Any stock savings bank may provide in its articles of incorporation for a higher percentage of affirmative shareholder votes to approve a conversion to a savings bank without capital stock.

Sec. 35. RCW 32.34.060 and 1994 c 256 s 116 are each amended to read as follows:

(1) Any holder of shares of a savings bank shall be entitled to receive the value of these shares, as specified in subsection (2) of this section, if (a) the savings bank is voluntarily liquidating, converting to a savings bank without capital stock, being acquired, merging, or consolidating, (b) the shareholder voted, in person or by proxy, against the liquidation, conversion, acquisition, merger, or consolidation, at a meeting of shareholders called for the purpose of voting on such transaction, and (c) the shareholder delivers a written demand for payment, with the stock certificates, to the savings bank within thirty days after such meeting of shareholders. The value of shares shall be paid in cash, within ten days after the later of the effective date of the transaction or the completion of the appraisal as specified in subsection (2) of this section.

(2) The value of such shares shall be determined as of the close of business on the business day before the shareholders' meeting at which the shareholder dissented, 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 institution that will survive the transaction, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If such appraisal is not completed by the later of the effective date of the transaction or the thirty-fifth day after receipt of the written demand and stock certificates, the director shall cause an appraisal to be made.

(3) The dissenting shareholders shall bear, on a pro rata basis based on the number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the surviving institution shall bear the cost of its appraisal and one-half the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the surviving institution, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on the number of dissenting shares owned.

The institution that is to survive the transaction may fix an amount which it considers to be not more than the fair market value of the shares of a savings bank at the time of the stockholder's meeting approving the transaction, which it will pay dissenting shareholders entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the surviving institution.

NEW SECTION. Sec. 36. RCW 32.20.160 and 1955 c 13 s 32.20.160 are each repealed.

NEW SECTION. Sec. 37. Sections 1 through 10 of this act constitute a new chapter in Title 32 RCW.

NEW SECTION. Sec. 38. 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 3, 1999.
 Passed the House April 6, 1999.
 Approved by the Governor April 15, 1999.
 Filed in Office of Secretary of State April 15, 1999.

CHAPTER 15

[Substitute Senate Bill 5185]

HIGHWAY WORK DONE BY STATE FORCES

AN ACT Relating to highway work done by state forces; and amending RCW 47.28.030.

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

Sec. 1. RCW 47.28.030 and 1984 c 194 s 1 are each amended to read as follows:

A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof is less than ~~((thirty)) fifty~~ fifty thousand dollars and effective July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than ~~((fifty)) eighty~~ eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for ~~((highway)) department of transportation~~ contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed ~~((fifty)) eighty~~ eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, materialmen, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

Passed the Senate February 12, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 16

[Senate Bill 5202]

COUNTY TREASURER'S EMPLOYMENT—QUALIFICATIONS

AN ACT Relating to qualifications for working for the county treasurer; and amending RCW 9.96A.020.

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

Sec. 1. RCW 9.96A.020 and 1993 c 71 s 1 are each amended to read as follows:

(1) Subject to the exceptions in subsections (3) and (4) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. However, for positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) Subsections (3) and (4) of this section only apply to a person applying for a certificate or for employment on or after July 25, 1993.

Passed the Senate March 3, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 17

[Second Substitute Senate Bill 5210]

SHELTER CARE HEARINGS—PLACING A CHILD WITH A RELATIVE—REVIEW OF COURT COMMISSIONER DECISIONS

AN ACT Relating to placement of children with a relative prior to and at a shelter care hearing; amending RCW 13.34.060; and adding a new section to chapter 13.34 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 13.34 RCW to read as follows:

The legislature has found that any intervention into the life of a child is also an intervention in the life of the parent, guardian, or legal custodian, and that the bond between child and parent is a critical element of child development. The legislature now also finds that children who cannot be with their parents, guardians, or legal custodians are best cared for, whenever possible and appropriate by family members with whom they have a relationship. This is particularly important when a child cannot be in the care of a parent, guardian, or legal custodian as a result of a court intervention.

Sec. 2. RCW 13.34.060 and 1998 c 328 s 2 are each amended to read as follows:

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section.

(a) Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered, priority placement for a child in shelter care shall be with any person described in RCW 74.15.020(2)(a). The person must be willing and available to care for the child and be able to meet any special needs of the child. If a child is not initially placed with a relative pursuant to this section, the supervising agency shall make an effort within available resources to place the child with a relative on the next business day. The supervising agency shall document its effort to place the child with a relative pursuant to this section. Nothing within this subsection (1)(a) establishes an entitlement to services or a right to a particular placement.

(b) Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing within seventy-two hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, that such waiver is knowing and voluntary.

(2) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parents, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title as soon as possible and in no event longer than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody. The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other

than writing, child protective services shall make reasonable efforts to also provide written notification.

The written notice of custody and rights shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at this hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number)."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under subsection (2) of this section, the juvenile court counselor assigned to the matter shall make

all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in subsections (2) and (3) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the juvenile court counselor or caseworker shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

(5) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived in court.

(6) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall hear evidence regarding the efforts made to place the child with a relative. The court shall make an express finding as to whether the notice required under subsections (2) and (3) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(7) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

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

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

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

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, and the child was initially placed with a relative pursuant to subsection (1) of this section, the court shall order continued placement with a relative, unless there is reasonable cause to believe the safety or welfare of the child would be jeopardized. If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to subsection (1) of this section. If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to whether subsections (2) and (3) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.

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

The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent and give weight to that fact before ordering return of the child to shelter care.

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

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

Passed the Senate March 16, 1999.
 Passed the House April 6, 1999.
 Approved by the Governor April 15, 1999.
 Filed in Office of Secretary of State April 15, 1999.

CHAPTER 18

[Substitute Senate Bill 5231]

TREASURY MANAGEMENT—COUNTY TREASURER'S DUTIES

AN ACT Relating to duties of the county treasurer pertaining to treasury management; amending RCW 28A.320.300, 28A.320.310, 28A.320.320, 36.29.020, 36.48.070, 54.24.010, 84.64.050, 84.64.080, and 84.64.120; and providing an effective date.

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

Sec. 1. RCW 28A.320.300 and 1990 c 33 s 335 are each amended to read as follows:

Any common school district board of directors is empowered to direct and authorize, and to delegate authority to an employee, officer, or agent of the common school district or the educational service district to direct and authorize, the county treasurer to invest funds described in RCW 28A.320.310 and 28A.320.320 and funds from state and federal sources as are then or thereafter received by the educational service district, and such funds from county sources as are then or thereafter received by the county treasurer, for distribution to the common school districts. Funds from state, county and federal sources which are so invested may be invested only for the period the funds are not required for the immediate necessities of the common school district as determined by the school district board of directors or its delegatee, and shall be invested in behalf of the common school district pursuant to the terms of RCW 28A.320.310, 28A.320.320, ~~((or))~~ 36.29.020, 36.29.022, or 36.29.024 as the nature of the funds shall dictate. A grant of authority by a common school district pursuant to this section shall be by resolution of the board of directors and shall specify the duration and extent of the authority so granted. Any authority delegated to an educational service district pursuant to this section may be redelegated pursuant to RCW 28A.310.220.

Sec. 2. RCW 28A.320.310 and 1990 c 33 s 336 are each amended to read as follows:

The board of directors of any school district of the state of Washington which now has, or hereafter shall have, funds in the capital projects fund of the district in the office of the county treasurer which in the judgment of said board are not required for the immediate necessities of the district, may invest and reinvest all, or any part, of such funds ~~((in United States securities, as hereinafter specified after and pursuant to a resolution adopted by the board, authorizing and directing the county treasurer, as ex officio the treasurer of said district, to invest or reinvest, said moneys or any designated amount thereof in United States securities and specifying the type or character of the United States securities in which said moneys shall be invested))~~ pursuant to RCW 35.39.030, 36.29.020, 36.29.022,

36.29.024, 39.59.020, 39.59.030, and 43.84.080: PROVIDED, That nothing herein authorized, or the type and character of the securities thus specified, shall have in itself the effect of delaying any program of building for which said funds shall have been authorized. Said funds and said securities and the profit and interest thereon, and the proceeds thereof, shall be held by the county treasurer to the credit and benefit of the capital projects fund of the district in the county treasurer's office. ~~((If in the judgment of the board it shall be necessary to redeem or to sell any of the purchased securities before their ultimate maturity date, the board may, by resolution, direct the county treasurer to cause such redemption to be had at the "Redemption Value" of said securities or to sell said bonds and securities at not less than market value and accrued interest. The foregoing "securities" shall include United States bonds, federal treasury notes and treasury bonds and United States certificates of indebtedness and other federal securities which may, during the life of this statute, come within the terms of this section:))~~

Sec. 3. RCW 28A.320.320 and 1983 c 66 s 1 are each amended to read as follows:

The county treasurer, or the trustee, guardian, or any other custodian of any school fund, when authorized to do so by the board of directors of any school district, shall invest or reinvest any school funds of such district in investment ~~((deposits in any qualified public depository, or any obligations, securities, certificates, notes, bonds, or short term securities or obligations, of the United States))~~ securities pursuant to RCW 36.29.020 and 36.29.022. The county treasurer shall have the power to select the particular investment in which said funds may be invested. All earnings and income from such investments shall inure to the benefit of any school fund designated by the board of directors of the school district which such board may lawfully designate: PROVIDED, That any interest or earnings being credited to a fund different from that which earned the interest or earnings shall only be expended for instructional supplies, equipment or capital outlay purposes. This section shall apply to all funds which may be lawfully so invested or reinvested which in the judgment of the school board are not required for the immediate necessities of the district.

Five percent of the interest or earnings, with an annual minimum of ten dollars or annual maximum of fifty dollars, on any transactions authorized by each resolution of the board of school directors shall be paid as an investment service fee to the office of county treasurer when the interest or earnings becomes available to the school district or an amount as determined pursuant to RCW 36.29.022 and 36.29.024.

Sec. 4. RCW 36.29.020 and 1997 c 393 s 4 are each amended to read as follows:

The county treasurer shall keep all moneys belonging to the state, or to any county, in his or her own possession until disbursed according to law. The county treasurer shall not place the same in the possession of any person to be used for any purpose; nor shall he or she loan or in any manner use or permit any person to use

the same; but it shall be lawful for a county treasurer to deposit any such moneys in any regularly designated qualified public depository. Any municipal corporation may by action of its governing body authorize any of its funds which are not required for immediate expenditure, and which are in the custody of the county treasurer or other municipal corporation treasurer, to be invested by such treasurer. The county treasurer may invest in savings or time accounts in designated qualified public depositories or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, Five percent of the earnings, with an annual maximum of fifty dollars, on each transaction authorized by the governing body shall be paid as an investment service fee to the office of the county treasurer or other municipal corporation treasurer when the earnings become available to the governing body: PROVIDED FURTHER, That if such investment service fee amounts to five dollars or less the county treasurer or other municipal corporation treasurer may waive such fee.

If in the judgment of the governing body of the municipal corporation or the county treasurer it is necessary to redeem or to sell any of the purchased securities before their ultimate maturity date, the governing body may, by resolution, direct the county treasurer pursuant to RCW 36.29.010(8) to cause such redemption to be had at the redemption value of the securities or to sell the securities at not less than market value and accrued interest.

Whenever the funds of any municipal corporation which are not required for immediate expenditure are in the custody or control of the county treasurer, and the governing body of such municipal corporation has not taken any action pertaining to the investment of any such funds, the county finance committee shall direct the county treasurer, under the investment policy of the county finance committee, to invest, to the maximum prudent extent, such funds or any portion thereof in savings or time accounts in designated qualified public depositories or in certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States, in bankers' acceptances purchased on the secondary market, in federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member

banks as determined by the board of governors of the federal reserve system or deposit such funds or any portion thereof in investment deposits as defined in RCW 39.58.010 secured by collateral in accordance with the provisions of chapters 39.58 and 39.59 RCW: PROVIDED, That the county treasurer shall have the power to select the specific qualified financial institution in which the funds may be invested. The interest or other earnings from such investments or deposits shall be deposited in the current expense fund of the county and may be used for general county purposes. The investment or deposit and disposition of the interest or other earnings therefrom authorized by this paragraph shall not apply to such funds as may be prohibited by the state Constitution from being so invested or deposited.

Sec. 5. RCW 36.48.070 and 1991 c 245 s 11 are each amended to read as follows:

The county treasurer, the county auditor, and the chair of the county legislative authority, ex officio, shall constitute the county finance committee. The county treasurer shall act as chair of the committee and the county auditor as secretary thereof. The committee shall keep a full and complete record of all its proceedings in appropriate books of record and all such records and all correspondence relating to the committee shall be kept in the office of the county auditor and shall be open to public inspection. The committee shall approve county investment policy and a debt policy and shall make appropriate rules and regulations for the carrying out of the provisions of RCW 36.48.010 through 36.48.060, not inconsistent with law.

Sec. 6. RCW 54.24.010 and 1959 c 218 s 2 are each amended to read as follows:

The treasurer of the county in which a utility district is located shall be ex officio treasurer of the district: PROVIDED, That the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the utility district. The commission may(~~(, and if the treasurer is not the county treasurer it shall,))~~ require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public utility district fund, into which shall be paid all district funds, and he shall maintain such special funds as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries; if the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall

designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in RCW 36.48.020 for deposit of county funds.

Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: PROVIDED, That the district pays the premium thereon.

Sec. 7. RCW 84.64.050 and 1991 c 245 s 25 are each amended to read as follows:

After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs: PROVIDED, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

Certificates of delinquency shall be prima facie evidence that:

(1) The property described was subject to taxation at the time the same was assessed;

(2) The property was assessed as required by law;

(3) The taxes or assessments were not paid at any time before the issuance of the certificate;

(4) Such certificate shall have the same force and effect as a lis pendens required under chapter 4.28 RCW.

The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer, and "interest" means interest and penalties unless the context requires otherwise.

The treasurer shall file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and

mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer shall send notice by regular first class mail. The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property shall be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property shall be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder: PROVIDED, That prior to the sale of the property, the treasurer shall order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of the property for the purpose of this section, and shall be entitled to the notice provided for in this section. Such title search shall be included in the costs of foreclosure.

The county treasurer shall not sell property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW.

Sec. 8. RCW 84.64.080 and 1991 c 245 s 27 are each amended to read as follows:

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases the court shall proceed to

determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, ((penalties;)) and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of sale duly issued by the court, entered the day of, , in proceedings

for foreclosure of tax liens upon real property, as per provisions of law, I shall on the . . . day of . . . , . . . , at . . . o'clock a.m., at . . . in the city of . . . , and county of . . . , state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this . . . day of . . .

.....
Treasurer of
county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all water and sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. In the event no claim for the excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington }
County of } ss.

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

Witnesseth, that, whereas, at a public sale of real property held on the . . . day of . . . , . . . , pursuant to a real property tax judgment entered in the superior court in the county of . . . on the . . . day of . . . , . . . , in proceedings to foreclose tax 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, the following described real property, to wit: (Here place description of real property conveyed) and that the . . . has complied with the laws of the state of

Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I, county treasurer of the county 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.

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

.....

County Treasurer.

Sec. 9. RCW 84.64.120 and 1991 c 245 s 28 are each amended to read as follows:

Appellate review of the judgment of the superior court may be sought as in other civil cases. However, review must be sought within thirty days after the entry of the judgment and the party taking such appeal shall deposit a sum equal to all taxes, interest, ((penalties;)) and costs with the clerk of the court, conditioned that the appellant shall prosecute the appeal with effect, and will pay the amount of any taxes, interest and costs which may be finally adjudged against the real property involved in the appeal by any court having jurisdiction of the cause. No appeal shall be allowed from any judgment for the sale of land or lot for taxes unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the clerk of the court of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court or the court of appeals shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty percent, and shall order that the amount deposited with the clerk of the court, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of the judgment, damages and costs. The clerk of the supreme court or the clerk of the division of the court of appeals in which the appeal is pending shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with the clerk of the court, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with the clerk of the court, and the county clerk

shall credit such judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in ~~((the))~~ the proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, ~~((penalties,))~~ interest, and costs, or any part thereof, in the proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his or her legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made.

NEW SECTION. Sec. 10. Section 5 of this act takes effect January 1, 2000.

Passed the Senate March 5, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 19

[Senate Bill 5567]

FEDERAL PAYMENTS TO COUNTIES TO REDUCE SCHOOL DEBT

AN ACT Relating to federal payments used to reduce the outstanding debt of school districts within counties; and adding a new section to chapter 36.01 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 36.01 RCW to read as follows:

The county legislative authority of any county that receives payment in lieu of taxes and payment equal to tax funds from the United States department of energy under section 168 of the federal atomic energy act of 1954 and nuclear waste policy act of 1982 and that has an agreed settlement or a joint stipulation dated before January 1, 1998, which agreed settlement or joint stipulation includes funds designated for state schools, may direct the county treasurer to distribute those designated funds to reduce the outstanding debt of the school districts within the county. Any such funds shall be divided among the school districts based upon the same percentages that each district's current assessed valuation is of the total assessed value for all eligible school districts if the district has outstanding debt that equals or exceeds the amount of its distribution. If the district does not have outstanding debt that equals or exceeds the amount of its distribution, any amount above the outstanding debt shall be reallocated to the remaining eligible districts. Any funds received before January 1, 1999, shall be distributed using the percentages calculated for 1998. The county treasurer shall apply the funds to any outstanding debt obligation selected by the respective school districts.

Passed the Senate March 10, 1999.
Passed the House April 6, 1999.
Approved by the Governor April 15, 1999.
Filed in Office of Secretary of State April 15, 1999.

CHAPTER 20

[Substitute Senate Bill 5274]

REGIONAL TRANSIT AUTHORITIES—FARE PAYMENT AND ENFORCEMENT

AN ACT Relating to fare payment and enforcement by regional transit authorities; amending RCW 81.112.020; adding new sections to chapter 81.112 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** The purpose of this act is to facilitate ease of boarding of commuter trains and light rail trains operated by regional transit authorities by allowing for barrier free entry ways. This act provides regional transit authorities with the power to require proof of payment; to set a schedule of fines and penalties not to exceed those classified as class 1 infractions under RCW 7.80.120; to employ individuals to monitor fare payment or contract for such services; to issue citations for fare nonpayment or related activities; and to keep records regarding citations issued for the purpose of tracking violations and issuing citations consistent with established schedules. This act is intended to be consistent with and implemented pursuant to chapter 7.80 RCW with regard to civil infractions, the issuance of citations, and the maintenance of citation records.

Sec. 2. RCW 81.112.020 and 1992 c 101 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) "Authority" means a regional transit authority authorized under this chapter.

(2) "Board" means the board of a regional transit authority.

(3) "Service area" or "area" means the area included within the houndaries of a regional transit authority.

(4) "System" means a regional transit system authorized under this chapter and under the jurisdiction of a regional transit authority.

(5) "Facilities" means any lands, interest in land, air rights over lands, and improvements thereto including vessel terminals, and any equipment, vehicles, vessels, and other components necessary to support the system.

(6) "Proof of payment" means evidence of fare prepayment authorized by a regional transit authority for the use of trains, including but not limited to commuter trains and light rail trains.

NEW SECTION. **Sec. 3.** A new section is added to chapter 81.112 RCW to read as follows:

(1) An authority is authorized to establish, by resolution, a schedule of fines and penalties for civil infractions established in section 4 of this act. Fines established by a regional transit authority shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) A regional transit authority may designate persons to monitor fare payment who are equivalent to and are authorized to exercise all the powers of an enforcement officer, defined in RCW 7.80.040. An authority is authorized to employ personnel to either monitor fare payment, or to contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment also have the authority to take the following actions:

- (i) Request proof of payment from passengers;
- (ii) Request personal identification from a passenger who does not produce proof of payment when requested;
- (iii) Issue a citation conforming to the requirements established in RCW 7.80.070; and
- (iv) Request that a passenger leave the regional transit authority train, including but not limited to commuter trains and light rail trains, when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) Regional transit authorities shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by chapter . . . , Laws of 1999 (this act) shall be heard and determined by a district court as provided in RCW 7.80.010 (1) and (4).

NEW SECTION. Sec. 4. A new section is added to chapter 81.112 RCW to read as follows:

(1) Persons traveling on trains, including but not limited to commuter trains or light rail trains, operated by an authority, shall pay the fare established by the authority. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by the authority under section 3(1) of this act:

- (a) Failure to pay the required fare;
- (b) Failure to display proof of payment when requested to do so by a person designated to monitor fare payment; and
- (c) Failure to depart the train, including but not limited to commuter trains and light rail trains, when requested to do so by a person designated to monitor fare payment.

NEW SECTION. Sec. 5. A new section is added to chapter 81.112 RCW to read as follows:

Nothing in RCW 81.112.020 and sections 3 through 5 of this act shall be deemed to prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

- (1) Fails to pay the required fare on more than one occasion within a twelve-month period;
- (2) Fails to sign a notice of civil infraction; or
- (3) Fails to depart the train, including but not limited to commuter trains and light rail trains, when requested to do so by a person designated to monitor fare payment.

Passed the Senate March 5, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 21

[Engrossed Substitute Senate Bill 5668]

CRIMINAL RECORD CHECKS—SCHOOL EMPLOYEES AND VOLUNTEERS

AN ACT Relating to criminal records checks for school employees and volunteers; amending RCW 43.43.834; and adding a new section to chapter 28A.320 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.320 RCW to read as follows:

If a volunteer alerts a school district that the volunteer has undergone a criminal records check in accordance with applicable state law, including RCW 10.97.050, 28A.400.303, 28A.410.010, or 43.43.830 through 43.43.845, within the two years before the time the volunteer is volunteering in the school, then the school may request that the volunteer furnish the school with a copy of the criminal history record information or sign a release to the business, school, organization, criminal justice agency, or juvenile justice or care agency, or other state agency that originally obtained the criminal history record information to permit the record information to be shared with the school. Once the school requests the information from the business, school, organization, or agency the information shall be furnished to the school. Any business, school, organization, agency, or its employee or official that shares the criminal history record information with the requesting school in accordance with this section is immune from criminal and civil liability for dissemination of the information.

If the criminal history record information is shared, the school must require the volunteer to sign a disclosure statement indicating that there has been no conviction since the completion date of the most recent criminal background inquiry.

Sec. 2. RCW 43.43.834 and 1998 c 10 s 3 are each amended to read as follows:

(1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;

(c) Convicted of crimes related to drugs as defined in RCW 43.43.830;

(d) Found in any dependency action under RCW 13.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;

(e) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

(f) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or

(g) Found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited, except as provided in section 1 of this act. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence.

Passed the Senate March 12, 1999.
Passed the House April 6, 1999.
Approved by the Governor April 15, 1999.
Filed in Office of Secretary of State April 15, 1999.

CHAPTER 22

[Substitute Senate Bill 5669]

CONVERSION VENDING UNITS AND MEDICAL UNITS

AN ACT Relating to conversion vending units and medical units; amending RCW 43.22.335, 43.22.340, 43.22.350, 43.22.370, 43.22.380, 43.22.390, 43.22.410, 43.22.420, and 43.22.434; and reenacting and amending RCW 43.22.360.

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

Sec. 1. RCW 43.22.335 and 1995 c 280 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.22.340 through 43.22.420.

(1) "Park trailer" means a park trailer as defined in the American National Standards Institute A119.5 standard for park trailers.

(2) "Recreational vehicle" means a vehicular-type unit primarily designed for recreational camping or travel use that has its own motive power or is mounted on or towed by another vehicle. The units include travel trailers, fifth-wheel trailers, folding camping trailers, truck campers, and motor homes.

(3) "Conversion vendor units" means a motor vehicle or recreational vehicle that has been converted or built for the purpose of being used for commercial sales at temporary locations. The units must be less than eight feet six inches wide in the set-up position and the inside working area must be less than forty feet in length.

(4) "Medical unit" means a self-propelled unit used to provide medical examinations, treatments, and medical and dental services or procedures, not including emergency response vehicles.

Sec. 2. RCW 43.22.340 and 1995 c 280 s 2 are each amended to read as follows:

(1) The director shall adopt specific rules for conversion vending units and medical units. The rules for conversion vending units and medical units shall be established to protect the occupants from fire; to address other life safety issues; and to ensure that the design and construction are capable of supporting any concentrated load of five hundred pounds or more.

(2) The director of labor and industries shall (~~prescribe and enforce~~) adopt rules (~~and regulations~~) governing safety of body and frame design, and the installation of plumbing, heating, and electrical equipment in mobile homes, commercial coaches, recreational vehicles, and/or park trailers: PROVIDED, That the director shall not prescribe or enforce rules (~~and regulations~~) governing the body and frame design of recreational vehicles and park trailers until after the American National Standards Institute shall have published standards and

specifications upon this subject. ~~((Such))~~ The rules ~~((and regulations))~~ shall be reasonably consistent with recognized and accepted principles of safety for body and frame design and plumbing, heating, and electrical installations, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe body and frame design, construction, plumbing, heating, electrical, and other equipment and shall correlate with and, so far as practicable, conform to the then current standards and specifications of the American National Standards Institute standards A119.1 for mobile homes and commercial coaches, A119.2 for recreational vehicles, and A119.5 for park trailers.

(3) It shall be unlawful for any person to lease, sell or offer for sale, within this state, any mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers manufactured after January 1, 1968, containing plumbing, heating, electrical, or other equipment, and after July 1, 1970 body and frame design or construction unless such equipment meets the requirements of the rules ~~((and regulations))~~ provided for ~~((herein))~~ in this section.

Sec. 3. RCW 43.22.350 and 1995 c 280 s 4 are each amended to read as follows:

(1) In compliance with any applicable provisions of this chapter, the director of the department of labor and industries shall establish a schedule of fees, whether on the basis of plan approval or inspection, for the issuance of an insigne which indicates that the mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, and/or park trailer complies with the provisions of RCW 43.22.340 through 43.22.410 or for any other purpose specifically authorized by any applicable provision of this chapter.

(2) Insignia are not required on mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers manufactured within this state for sale outside this state which are sold to persons outside this state.

Sec. 4. RCW 43.22.360 and 1995 c 289 s 1 and 1995 c 280 s 7 are each reenacted and amended to read as follows:

(1) Plans and specifications of each model or production prototype of a mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, and/or park trailer showing body and frame design, construction, plumbing, heating and electrical specifications and data shall be submitted to the department of labor and industries for approval and recommendations with respect to compliance with the ~~((regulations))~~ rules and standards of each of such agencies. When plans have been submitted and approved as ~~((aforesaid))~~ required, no changes or alterations shall be made to body and frame design, construction, plumbing, heating or electrical installations or specifications shown thereon in any mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, or park trailer without prior written approval of the department of labor and industries.

(2) The director may adopt rules that provide for approval of a plan that is certified as meeting state requirements or the equivalent by a professional who is licensed or certified in a state whose licensure or certification requirements meet or exceed Washington requirements.

Sec. 5. RCW 43.22.370 and 1995 c 280 s 8 are each amended to read as follows:

Any mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, and/or park trailer leased or sold in Washington and manufactured prior to July 1, 1968, which has not been inspected prior to its sale and which does not meet the requirements prescribed will not be required to comply with ((said)) those requirements except for alterations or installations referred to in RCW 43.22.360.

Sec. 6. RCW 43.22.380 and 1995 c 280 s 9 are each amended to read as follows:

Used mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers manufactured for use outside this state which do not meet the requirements prescribed and have been used for six months or more will not be required to comply with ((said)) those requirements except for alterations or installations referred to in RCW 43.22.360.

Sec. 7. RCW 43.22.390 and 1995 c 280 s 10 are each amended to read as follows:

Mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers subject to the provisions of RCW 43.22.340 through 43.22.410, and mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers upon which alterations of body and frame design, construction or installations of plumbing, heating or electrical equipment referred to in RCW 43.22.360 are made after July 1, 1968, shall have affixed thereto such insigne of approval.

Sec. 8. RCW 43.22.410 and 1995 c 280 s 12 are each amended to read as follows:

Any mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, and/or park trailer that meets the requirements prescribed under RCW 43.22.340 shall not be required to comply with any ordinances of a city or county prescribing requirements for body and frame design, construction or plumbing, heating and electrical equipment installed in mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers.

Sec. 9. RCW 43.22.420 and 1995 c 280 s 13 are each amended to read as follows:

There is hereby created a factory assembled structures advisory board consisting of nine members to be appointed by the director of labor and industries. It shall be the purpose and function of the board to advise the director on all

matters pertaining to the enforcement of this chapter including but not limited to standards of body and frame design, construction and plumbing, heating and electrical installations, minimum inspection procedures, the adoption of rules (~~and regulations~~) pertaining to the manufacture of factory assembled structures, mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and park trailers. The advisory board shall periodically review the rules (~~promulgated~~) adopted under RCW 43.22.450 through 43.22.490 and shall recommend changes of such rules to the department if it deems changes advisable.

The members of the advisory board shall be representative of consumers, the regulated industries, and allied professionals. The term of each member shall be four years. However, the director may appoint the initial members of the advisory board to staggered terms not exceeding four years.

The chief inspector or any person acting as chief inspector for the factory assembled structures, mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, and park trailer section shall serve as secretary of the board during his tenure as chief. Meetings of the board shall be called at the discretion of the director of labor and industries, but at least quarterly. Each member of the board shall be paid travel expenses in accordance with RCW 43.03.050 and 43.03.060 (~~as now existing or hereafter amended~~) which shall be paid out of the appropriation to the department of labor and industries, upon vouchers approved by the director of labor and industries or his or her designee.

Sec. 10. RCW 43.22.434 and 1995 c 280 s 5 are each amended to read as follows:

(1) The director or the director's authorized representative may conduct such inspections (~~and~~), investigations, and audits as may be necessary to (~~promulgate~~) adopt or enforce mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, park trailers, factory built housing, and factory built commercial structures are manufactured, stored, or held for sale; (~~and~~)

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the National Mobile Home Construction and Safety Standards Act of 1974. Each inspection shall be commenced and completed with reasonable promptness; and

(c) As requested by an owner of a conversion vending unit or medical unit, inspect an alteration.

(3) ((In carrying out the inspections authorized by this section the director may establish, by rule, and impose on mobile home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by the director in conducting the inspections:)) The department shall set a schedule of fees by rule which will cover the costs incurred by the department in the administration of RCW 43.22.335 through 43.22.490.

Passed the Senate March 9, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 23

[Senate Bill 5741]

WEIGH STATION STOP EXEMPTIONS

AN ACT Relating to exemptions from requirements for trucks to stop at scales; and amending RCW 46.44.105.

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

Sec. 1. RCW 46.44.105 and 1996 c 92 s 2 are each amended to read as follows:

(1) Violation of any of the provisions of this chapter is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed a penalty for each pound overweight, as follows:

(a) One pound through four thousand pounds overweight is three cents for each pound;

(b) Four thousand one pounds through ten thousand pounds overweight is one hundred twenty dollars plus twelve cents per pound for each additional pound over four thousand pounds overweight;

(c) Ten thousand one pounds through fifteen thousand pounds overweight is eight hundred forty dollars plus sixteen cents per pound for each additional pound over ten thousand pounds overweight;

(d) Fifteen thousand one pounds through twenty thousand pounds overweight is one thousand six hundred forty dollars plus twenty cents per pound for each additional pound over fifteen thousand pounds overweight;

(e) Twenty thousand one pounds and more is two thousand six hundred forty dollars plus thirty cents per pound for each additional pound over twenty thousand pounds overweight.

Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section or the additional penalty assessed in subsection (2) of this section, except as provided for the first violation, be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court shall secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in RCW 46.32.005, other than the driver of a bus as defined in RCW 46.32.005(2) or a vehicle with a gross vehicle or combination weight not over sixteen thousand pounds and not transporting hazardous materials in accordance with RCW 46.32.005(3), to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten

percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined one thousand dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "overweight" means the poundage in excess of the maximum allowable gross weight or axle/axle grouping weight prescribed by RCW 46.44.041, 46.44.042, 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under subsections (1) and (2) of this section, the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the

court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(11) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(12) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section.

Passed the Senate March 13, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 24

[Senate Bill 5806]

ENHANCED 911 TELEPHONE SYSTEMS— RULES ON ACCURACY OF LOCATION INFORMATION

AN ACT Relating to providing for the adjutant general to establish rules concerning the accuracy of location information derived from enhanced 911 telephone systems; amending RCW 43.43.934; adding a new section to chapter 38.52 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 citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to determine the location of the emergency immediately without the caller needing to speak. The legislature further finds that the degree of accuracy of the displayed information must be adequate to permit rapid location of the caller while taking into consideration variables specific to local conditions. The legislature further finds that it is appropriate that rules permitting local fire agencies to evaluate and approve the accuracy of location information relating to their service areas be adopted.

NEW SECTION. **Sec. 2.** A new section is added to chapter 38.52 RCW to read as follows:

The adjutant general shall establish rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service. Such rules shall permit the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to take into consideration local circumstances when approving the accuracy of location information generated when calls are made to 911 from facilities within his or her service area.

Sec. 3. RCW 43.43.934 and 1998 c 245 s 65 are each amended to read as follows:

Except for matters relating to the statutory duties of the chief of the Washington state patrol that are to be carried out through the director of fire protection, the board shall have the responsibility of developing a comprehensive state policy regarding fire protection services. In carrying out its duties, the board shall:

(1)(a) Adopt a state fire training and education master plan that allows to the maximum feasible extent for negotiated agreements: (i) With the state board for community and technical colleges to provide academic, vocational, and field training programs for the fire service and (ii) with the higher education coordinating board and the state colleges and universities to provide instructional programs requiring advanced training, especially in command and management skills;

(b) Adopt minimum standards for each level of responsibility among personnel with fire suppression, prevention, inspection, and investigation responsibilities that assure continuing assessment of skills and are flexible enough to meet emerging technologies. With particular respect to training for fire investigations, the master plan shall encourage cross training in appropriate law enforcement skills. To meet special local needs, fire agencies may adopt more stringent requirements than those adopted by the state;

(c) Cooperate with the common schools, technical and community colleges, institutions of higher education, and any department or division of the state, or of any county or municipal corporation in establishing and maintaining instruction in fire service training and education in accordance with any act of congress and legislation enacted by the legislature in pursuance thereof and in establishing, building, and operating training and education facilities.

Industrial fire departments and private fire investigators may participate in training and education programs under this chapter for a reasonable fee established by rule;

(d) Develop and adopt a master plan for constructing, equipping, maintaining, and operating necessary fire service training and education facilities subject to the provisions of chapter 43.19 RCW; and

(e) Develop and adopt a master plan for the purchase, lease, or other acquisition of real estate necessary for fire service training and education facilities in a manner provided by law.

(2) In addition to its responsibilities for fire service training, the board shall:

(a) Adopt a state fire protection master plan;

(b) Monitor fire protection in the state and develop objectives and priorities to improve fire protection for the state's citizens including: (i) The comprehensiveness of state and local inspections required by law for fire and life safety; (ii) the level of skills and training of inspectors, as well as needs for additional

training; and (iii) the efforts of local, regional, and state inspection agencies to improve coordination and reduce duplication among inspection efforts;

(c) Establish and promote state arson control programs and ensure development of local arson control programs;

(d) Provide representation for local fire protection services to the governor in state-level fire protection planning matters such as, but not limited to, hazardous materials control;

(e) Recommend to the (~~director of community, trade, and economic development~~) adjutant general rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service;

(f) Seek and solicit grants, gifts, bequests, devises, and matching funds for use in furthering the objectives and duties of the board, and establish procedures for administering them;

(g) Promote mutual aid and disaster planning for fire services in this state;

(h) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention; and

(i) Implement any legislation enacted by the legislature to meet the requirements of any acts of congress that apply to this section.

(3) In carrying out its statutory duties, the board shall give particular consideration to the appropriate roles to be played by the state and by local jurisdictions with fire protection responsibilities. Any determinations on the division of responsibility shall be made in consultation with local fire officials and their representatives.

To the extent possible, the board shall encourage development of regional units along compatible geographic, population, economic, and fire risk dimensions. Such regional units may serve to: (a) Reinforce coordination among state and local activities in fire service training, reporting, inspections, and investigations; (b) identify areas of special need, particularly in smaller jurisdictions with inadequate resources; (c) assist the state in its oversight responsibilities; (d) identify funding needs and options at both the state and local levels; and (e) provide models for building local capacity in fire protection programs.

Passed the Senate March 13, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 25

[Substitute Senate Bill 5838]

PERSONAL HOLIDAY LEAVE SHARING FOR SCHOOL DISTRICT EMPLOYEES

AN ACT Relating to personal holiday leave sharing for school district employees; and amending RCW 41.04.665.

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

Sec. 1. RCW 41.04.665 and 1996 c 176 s 1 are each amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature and which has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(b) The employee's absence and the use of shared leave are justified;

(c) The employee has depleted or will shortly deplete his or her annual leave and sick leave reserves;

(d) The employee has abided by agency rules regarding sick leave use; and

(e) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of four hundred eighty hours of sick leave after the transfer. In no event may such an employee request a transfer of more than six days of sick leave during any twelve-month period.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, ~~((under the provisions of this section relating to the transfer of leave))~~ or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue

annual leave but does accrue sick leave and who has an accrued sick leave balance of more than sixty days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (f) of this section. In no event may such an employee request a transfer of more than six days of sick leave during any twelve month period, or request a transfer that would result in his or her sick leave account going below sixty days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred

the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

Passed the Senate March 13, 1999.

Passed the House April 6, 1999.

Approved by the Governor April 15, 1999.

Filed in Office of Secretary of State April 15, 1999.

CHAPTER 26

[Senate Bill 5734]

MOTHER JOSEPH DAY AND MARCUS WHITMAN DAY

AN ACT Relating to Mother Joseph day; and amending RCW 1.16.050.

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

Sec. 1. RCW 1.16.050 and 1993 c 129 s 2 are each amended to read as follows:

The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized

as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the second Sunday in October be recognized as Washington state children's day but shall not be considered a legal holiday for any purposes.

The legislature declares that the sixteenth day of April shall be recognized as Mother Joseph day and the fourth day of September as Marcus Whitman day, but neither shall be considered legal holidays for any purpose.

Passed the Senate April 12, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 16, 1999.

Filed in Office of Secretary of State April 16, 1999.

CHAPTER 27

[House Bill 1011]

HARASSMENT AND STALKING THROUGH ELECTRONIC COMMUNICATIONS

AN ACT Relating to harassment and stalking through the use of electronic communications; amending RCW 9A.46.020, 9A.46.110, and 10.14.020; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of this act to clarify that electronic communications are included in the types of conduct and actions that can constitute

the crimes of harassment and stalking. It is not the intent of the legislature, by adoption of this act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.

Sec. 2. RCW 9A.46.020 and 1997 c 105 s 1 are each amended to read as follows:

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2) A person who harasses another is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW, except that the person is guilty of a class C felony if either of the following applies: (a) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or (b) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

Sec. 3. RCW 9A.46.110 and 1994 c 271 s 801 are each amended to read as follows:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private (~~detective~~) investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (b) the stalking violates any protective order protecting the person being stalked; (c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (d) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.125, while stalking the person; (e) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community correction's officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (f) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(d) "Repeatedly" means on two or more separate occasions.

Sec. 4. RCW 10.14.020 and 1995 c 127 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) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct is contact by a person over age eighteen that would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of "course of conduct."

Passed the House February 10, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 28

[House Bill 1018]

WASHINGTON AWARD FOR VOCATIONAL EXCELLENCE

AN ACT Relating to the Washington award for vocational excellence; amending RCW 28C.04.545; and declaring an emergency.

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

Sec. 1. RCW 28C.04.545 and 1995 1st sp.s. c 7 s 6 are each amended to read as follows:

(1) The respective governing boards of the public technical colleges shall provide fee waivers for a maximum of two years for those recipients of the Washington award for vocational excellence established under RCW 28C.04.520 through 28C.04.540 who received the award before June 30, 1994. To qualify for the waiver, recipients shall enter the public technical college within three years of receiving the award. An above average rating at the (~~vocational-technical institute~~) technical college in the first year shall be required to qualify for the second-year waiver.

(2) Students named by the work force training and education coordinating board after June 30, 1994, as recipients of the Washington award for vocational excellence under RCW 28C.04.520 through 28C.04.550 shall be eligible to receive a grant for undergraduate course work as authorized under RCW 28B.80.272.

(3)(a) Beginning with awards made during the 1998-99 academic year, recipients must complete using the award before the fall term in the sixth year following the date of the award. For these recipients, eligibility for the award is forfeited after this period.

(b) All persons awarded a Washington award for vocational excellence before the 1995-96 academic year and who have remaining eligibility on the effective date of this section must complete using the award before September 2002. For these recipients, eligibility for the award is forfeited after this period.

(c) All persons awarded a Washington award for vocational excellence during the 1995-96, 1996-97, and 1997-98 academic years must complete using the award before September 2005. For these recipients, eligibility for the award is forfeited after this period.

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

Passed the House February 10, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 29

[Substitute House Bill 1075]

SMALL WORKS ROSTER BY PORT DISTRICTS—MONETARY LIMIT INCREASED

AN ACT Relating to increasing the monetary limit for use of the small works roster by port districts; and amending RCW 53.08.120.

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

Sec. 1. RCW 53.08.120 and 1998 c 278 s 6 are each amended to read as follows:

All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts for work, the estimated cost of which exceeds ~~((one))~~ two hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to

RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Each port district shall maintain a small works roster, as provided in RCW 39.04.155, and may use the small works roster process to award contracts in lieu of calling for sealed bids whenever work is done by contract, the estimated cost of which is ~~((one))~~ two hundred thousand dollars or less. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

A report on the effectiveness of the change in the bid limit will be made to the alternative works construction methods oversight committee prior to the 2003 legislative session.

Passed the House March 4, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 30

[House Bill 1092]

ESCROW AGENTS AND OFFICERS

AN ACT Relating to the licensing, regulation, and fees of escrow agents and escrow officers; amending RCW 18.44.010, 18.44.020, 18.44.030, 18.44.050, 18.44.060, 18.44.067, 18.44.070, 18.44.080, 18.44.090, 18.44.100, 18.44.110, 18.44.120, 18.44.125, 18.44.130, 18.44.140, 18.44.160, 18.44.175, 18.44.180, 18.44.200, 18.44.260, 18.44.280, 18.44.290, 18.44.300, 18.44.310, 18.44.320, 18.44.330, 18.44.340, 18.44.350, 18.44.360, 18.44.370, and 18.44.145; adding new sections to chapter 18.44 RCW; adding new sections to chapter 48.29 RCW; recodifying RCW 18.44.010, 18.44.020, 18.44.030, 18.44.330, 18.44.340, 18.44.067, 18.44.200, 18.44.290, 18.44.300, 18.44.310, 18.44.350, 18.44.080, 18.44.090, 18.44.100, 18.44.110, 18.44.120, 18.44.140, 18.44.180, 18.44.250, 18.44.050, 18.44.060, 18.44.360, 18.44.370, 18.44.375, 18.44.380, 18.44.385, 18.44.390, 18.44.395, 18.44.398, 18.44.070, 18.44.320, 18.44.280, 18.44.260, 18.44.175, 18.44.145, 18.44.125, 18.44.130, 18.44.190, 18.44.170, 18.44.160, 18.44.208, 18.44.215, 18.44.900, 18.44.910, 18.44.920, 18.44.921, and 18.44.922; repealing RCW 18.44.040, 18.44.065, 18.44.150, 18.44.220, and 18.44.240; and prescribing penalties.

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

Sec. 1. RCW 18.44.010 and 1995 c 238 s 1 are each amended to read as follows:

Unless a different meaning is apparent from the context ~~((otherwise requires))~~, terms used in this chapter shall have the following meanings:

- (1) "Department" means the department of financial institutions.
- (2) "Director" means the director of financial institutions, or his or her duly authorized representative.

(3) "Director of licensing" means the director of the department of licensing, or his or her duly authorized representative.

(4) "Escrow" means any transaction, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the internal revenue code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

~~((4))~~ (5) "Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction.

(6) "Escrow agent" means any (~~sole proprietorship, firm, association, partnership, or corporation~~) person engaged in the business of performing for compensation the duties of the third person referred to in ~~((RCW 18.44.010(3) above))~~ subsection (4) of this section.

~~((5) "Certificated))~~ (7) "Licensed escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a (~~certificate of registration~~) license as an escrow agent under the provisions of this chapter.

~~((6))~~ (8) "Person" (~~unless a different meaning appears from the context, includes an individual, a~~) means a natural person, firm, association, partnership (~~or~~), corporation, limited liability company, or the plural thereof, whether resident, nonresident, citizen, or not.

~~((7) "Escrow))~~ (9) "Licensed escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

~~((8))~~ (10) "Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent.

(11) "Escrow commission" means the escrow commission of the state of Washington created by RCW 18.44.208 (as recodified by this act).

~~((9))~~ (12) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee.

Sec. 2. RCW 18.44.020 and 1977 ex.s. c 156 s 2 are each amended to read as follows:

It shall be unlawful for any person to engage in business as an escrow agent ~~((within this state))~~ by performing escrows or any of the functions of an escrow

agent as described in RCW 18.44.010(4) within this state or with respect to transactions that involve personal property or real property located in this state unless such person possesses a valid ((certificate of registration)) license issued by the director pursuant to this chapter((~~PROVIDED, That~~)). The ((registration and)) licensing requirements of this chapter shall not apply to:

(1) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, ~~((title insurance companies, the duty authorized agents of title insurance companies the business of which agents is exclusively devoted to the title insurance business,))~~ or any federally approved agency or lending institution under the national housing act (12 U.S.C. Sec. 1703).

(2) Any person licensed to practice law in this state while engaged in the performance of his or her professional duties.

(3) Any real estate company, broker, or agent subject to the jurisdiction of the director of licensing while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such real estate company, broker, or agent: PROVIDED, ~~((HOWEVER,))~~ That no compensation is received for escrow services.

(4) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursement or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court.

(6) Title insurance companies having a valid certificate of authority issued by the insurance commissioner of this state and title insurance agents having a valid license as a title insurance agent issued by the insurance commissioner of this state.

Sec. 3. RCW 18.44.030 and 1977 ex.s. c 156 s 3 are each amended to read as follows:

An application for ~~((registration as))~~ an escrow agent license shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. ~~((If the applicant is a corporation, the application shall include a list of the officers and directors of such corporation, and their addresses; if the applicant is a firm or partnership, the application shall include a list of the names and addresses of the partners. The application shall include a consent to service of process, in such form as the director shall prescribe, and payment of the fee required by RCW 18.44.080.))~~ An application for an escrow agent license shall include fingerprints for all officers, directors, owners, partners, and controlling persons, and, unless waived by the director, the following:

(1) The applicant's form of business organization and place of organization;

(2) If the applicant is a corporation or limited liability company, the address of its physical location, a list of officers, controlling persons, and directors of such

corporation or company and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. If the applicant is a sole proprietorship or partnership, the address of its business location, a list of owners, partners, or controlling persons and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. Any information in the application regarding the personal residential address or telephone number of any officer, director, partner, owner, controlling person, or employee is exempt from the public records disclosure requirements of chapter 42.17 RCW:

(3) In the event the applicant is doing business under an assumed name, a copy of the master business license with the registered trade name shown;

(4) The qualifications and business history of the applicant and all of its officers, directors, owners, partners, and controlling persons;

(5) A personal credit report from a recognized credit reporting bureau satisfactory to the director on all officers, directors, owners, partners, and controlling persons of the applicant;

(6) Whether any of the officers, directors, owners, partners, or controlling persons have been convicted of any crime within the preceding ten years which relates directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, any unfair or deceptive act or practice, or conversion;

(7) The identity of the licensed escrow officer designated by the escrow agent as the designated escrow officer responsible for supervising the agent's escrow activity;

(8) Evidence of compliance with the bonding and insurance requirements of RCW 18.44.050 (as recodified by this act); and

(9) Any other information the director may require by rule. The director may share any information contained within a license application, including fingerprints, with the federal bureau of investigation and other regulatory or law enforcement agencies.

NEW SECTION. Sec. 4. (1) Any person desiring to become a licensed escrow officer must successfully pass an examination.

(2) The escrow officer examination shall encompass the following:

(a) Appropriate knowledge of the English language, including reading, writing, and arithmetic;

(b) An understanding of the principles of real estate conveyancing and the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and optional agreements, leases, earnest money agreements, personal property transfers, and encumbrances;

(c) An understanding of the obligations between principal and agent;

(d) An understanding of the meaning and nature of encumbrances upon real property;

(e) An understanding of the principles and practice of trust accounting; and

(f) An understanding of the escrow agent registration act and other applicable law such as the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and regulation X, 24 C.F.R. Sec. 3500.

(3) The examination shall be in such form as prescribed by the director with the advice of the escrow commission, and shall be given at least annually.

Sec. 5. RCW 18.44.050 and 1979 c 70 s 1 are each amended to read as follows:

(1) At the time of filing an application ((as)) for an escrow agent license, or any renewal or reinstatement ((thereof)) of an escrow agent license, the applicant shall ((satisfy)) provide satisfactory evidence to the director ((that it has)) of having obtained the following as evidence of financial responsibility:

((+)) (a) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions; ((and

—(2)) (b) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose; and

(c) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. 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 employee's violation of 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 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.

(2) For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact ~~((surety))~~ this line of business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees or officers as defined in the bond, acting alone or in collusion with others. ~~((Said))~~ This bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(3) For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(4) Except as provided in RCW 18.44.360 (as recodified by this act), the fidelity bond, surety bond, and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request.

Sec. 6. RCW 18.44.060 and 1965 c 153 s 6 are each amended to read as follows:

In the event of cancellation of ~~((a))~~ either the fidelity bond, the surety bond, or both, the director shall require the filing of a new bond or bonds. Failure to ~~((deposit such))~~ provide the director with satisfactory evidence of a new bond after receipt by the director of notification ((by the director)) that one is required or by the effective date of the cancellation notice, whichever is later, shall be sufficient grounds for the suspension or revocation of the ~~((certificate of registration))~~ escrow agent's license.

Sec. 7. RCW 18.44.067 and 1977 ex.s. c 156 s 19 are each amended to read as follows:

A licensed escrow agent shall provide notice in writing ((shall be given)) to the director and to the insurer providing coverage under RCW 18.44.050 ((as now or hereafter amended)) (as recodified by this act) of any change of business location ((or of)), branch office location, or business name. Such notice shall be given in a form prescribed by the director and shall be delivered at least ten

business days prior to the change in business location or name. Upon the surrender of the original (~~((registration))~~) license for the agent or the (~~((registration))~~) applicable (~~((to a))~~) branch office and a payment of a fee, the director shall issue a new (~~((certificate covering))~~) license for the new location.

Sec. 8. RCW 18.44.070 and 1990 c 203 s 1 are each amended to read as follows:

(1) Every (~~((certificated))~~) licensed escrow agent shall keep adequate records, as determined by rule by the director, of all transactions handled by or through the agent including itemization of all receipts and disbursements of each transaction (~~((; which))~~). These records shall be maintained in this state, unless otherwise approved by the director, for a period of six years from completion of the transaction. These records shall be open to inspection by the director or the director's authorized representatives.

(2) Every (~~((certificated))~~) licensed escrow agent shall keep (~~((a))~~) separate escrow fund accounts as determined by rule by the director in (~~((a))~~) recognized Washington state (~~((depository))~~) depositories authorized to receive funds, in which shall be kept separate and apart and segregated from the agent's own funds, all funds or moneys of clients which are being held by the agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof.

(3) An escrow agent, unless exempted by RCW 18.44.020(2) (as recodified by this act), shall not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. An escrow agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

~~((1))~~ (a) Cash;

~~((2))~~ (b) Interbank electronic transfers such that the funds are unconditionally received by the escrow agent or the agent's depository;

~~((3))~~ (c) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state; (~~((or~~

~~((4))~~ (d) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or

~~((5))~~ (e) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the federal expedited funds availability act, 12 U.S.C. Sec. 4001 et seq.

(4) For purposes of this section, the word "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

(5) Violation of this section shall subject an escrow agent to penalties as prescribed in Title 9A RCW and remedies as provided in chapter 19.86 RCW and shall constitute grounds for suspension or revocation of the (~~registration or~~) license of any (~~certified~~) licensed escrow agent or licensed escrow officer. In addition, an escrow agent who is required to be licensed under this chapter and who violates this section or an individual who is required to be licensed as an escrow officer under this chapter and who violates this section, may be subject to penalties as prescribed in RCW 18.44.260 (as recodified by this act).

NEW SECTION. Sec. 9. It is a violation of this chapter for any escrow agent, controlling person, officer, designated escrow officer, independent contractor, employee of an escrow business, or other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business as required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, designated escrow officer, or other licensed escrow officers the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of an escrow agent, including in the case of a licensed escrow agent an order to cease and desist or other order of the director; or

(10) Fail to make any report or statement lawfully required by the director or other public official.

Sec. 10. RCW 18.44.080 and 1995 c 238 s 2 are each amended to read as follows:

The director shall charge and collect the following fees as established by rule by the director:

(1) A fee for filing an original or a renewal application for ~~((registration as))~~ an escrow agent~~((;))~~ license, a fee for each application for an additional licensed location, a fee for an application for a change of address for an escrow agent, annual fees for the first office or location and for each additional office or location, and under RCW 43.135.055 the director shall set the annual fee for an escrow agent license up to five hundred sixty-five dollars in fiscal year 2000.

(2) A fee for filing an original or a renewal application for an escrow officer license, a fee for an application for a change of address~~((;))~~ for each ~~((certificate of registration and for each))~~ escrow officer license being so changed, a fee to activate an inactive escrow officer license or transfer an escrow officer license, and under RCW 43.135.055 the director shall set the annual fee for an escrow officer license up to two hundred thirty-five dollars in fiscal year 2000.

(3) A fee for filing an application for a duplicate of ~~((a certificate of registration))~~ an escrow agent license or of an escrow officer license lost, stolen, destroyed, or for replacement.

(4) A fee for providing ~~((administrative support to the escrow commission))~~ license examinations.

(5) An hourly audit fee. In setting this fee, the director shall ensure that every examination and audit, or any part of the examination or audit, of any person licensed or subject to licensing in this state requiring travel and services outside this state by the director or by employees designated by the director, shall be at the expense of the person examined or audited at the hourly rate established by the director, plus the per diem compensation and actual travel expenses incurred by the director or his or her employees conducting the examination or audit. When making any examination or audit under this chapter, the director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners or auditors, the cost of which shall be borne by the person who is the subject of the examination or audit.

~~((All fees under this chapter shall be set by rule by the director.))~~ In ~~((fixing))~~ establishing these fees, the director shall set the fees at a sufficient level to defray the costs of administering this chapter.

All fees received by the director under this chapter shall be paid into the state treasury to the credit of the banking examination fund.

Sec. 11. RCW 18.44.090 and 1977 ex.s. c 156 s 8 are each amended to read as follows:

Upon the filing of the application for ~~((registration as))~~ an escrow agent license on a form provided by the director and satisfying the requirements as set forth in this chapter, the director shall issue and deliver to the applicant a ~~((certificate of registration))~~ license to engage in the business of an escrow agent at the location set forth in the ~~((certificate))~~ license.

Sec. 12. RCW 18.44.100 and 1965 c 153 s 10 are each amended to read as follows:

An escrow agent's ~~((certificate or [of] registration))~~ license shall remain in effect until surrendered, revoked, suspended, or until it expires, and shall at all times be kept conspicuously posted in all places of business of the agent.

Sec. 13. RCW 18.44.110 and 1985 c 340 s 2 are each amended to read as follows:

Each escrow agent's ~~((ertificate))~~ license shall expire at noon on the thirty-first day of December of any calendar year. ~~((Registration))~~ The license may be renewed by filing an application and paying the annual ~~((registration))~~ license fee for the next succeeding calendar year.

Sec. 14. RCW 18.44.120 and 1965 c 153 s 12 are each amended to read as follows:

An escrow agent's ~~((ertificate))~~ license which has not been renewed may be reinstated at any time prior to the thirtieth day of January following its expiration, upon the payment to the director of the annual ~~((registration))~~ license fees then in default and a penalty equal to one-half of the annual ~~((registration))~~ license fees then in default.

Sec. 15. RCW 18.44.125 and 1996 c 293 s 11 are each amended to read as follows:

The director shall suspend the ~~((ertificate-of-registration))~~ license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's ~~((ertificate-of-registration))~~ license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for ~~((registration))~~ licensing during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose.

Sec. 16. RCW 18.44.130 and 1977 ex.s. c 156 s 9 are each amended to read as follows:

The revocation, suspension, surrender, or expiration of an escrow agent's ~~((ertificate))~~ license shall not impair or affect preexisting escrows accepted by the agent prior to such revocation, suspension, surrender, or expiration: PROVIDED, That the escrow agent shall within five work days provide written notice to all principals of such preexisting escrows of the agent's loss of ~~((registration))~~ license. The notice shall include as a minimum the reason for the loss of ~~((registration))~~ license, the estimated date for completing the escrow, and the condition of the agent's bond and whether it is in effect or whether notice of cancellation has been

given. The notice shall afford the principals the right to withdraw the escrow without monetary loss.

Sec. 17. RCW 18.44.140 and 1965 c 153 s 14 are each amended to read as follows:

Any person required by this chapter to obtain a ~~((certificate of registration))~~ license who engages in business as an escrow agent without applying for and receiving the ~~((certificate of registration))~~ license required by this chapter, or ~~((wilfully))~~ wilfully continues to act as an escrow agent or licensed escrow officer after surrender, expiration, suspension, or revocation of his ~~((certificate))~~ or her license, is guilty of a misdemeanor punishable by imprisonment for not more than ninety days, or by a fine of not more than ~~((two hundred fifty dollars))~~ one hundred dollars per day for each day's violation, or by both such fine and imprisonment.

Sec. 18. RCW 18.44.160 and 1977 ex.s. c 156 s 10 are each amended to read as follows:

(1) The director, through the attorney general, may prosecute an action in any court of competent jurisdiction to enforce any order made by him or her pursuant to this chapter and shall not be required to post a bond in any such court proceedings.

(2) If the director has cause to believe that any person has violated any penal provision of this chapter he or she may refer the violation to the attorney general or the prosecuting attorney of the county in which the offense was committed.

(3) Whenever ~~((it shall appear))~~ the director has cause to believe that any person, required to be licensed by this chapter ~~((to register with the department)),~~ is conducting business as an escrow agent without ~~((having applied for and obtained a certificate of registration))~~ a valid license, or that any ~~((certificated))~~ licensed escrow agent, directly or through an agent or employee, is engaged in any false, unfair and deceptive, or misleading advertising or promotional, activity or business practices, or is conducting business in a manner deemed unsafe or injurious to the public ~~((or any party having business relations with such escrow agent as a contracting party to an escrow agreement as defined in RCW 18.44.010)),~~ or ~~((in violation of))~~ has violated, is violating, or is about to violate any of the provisions of this chapter, ~~((the attorney general or the prosecuting attorney of the appropriate county may, after such investigation as may be necessary, apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity violative of this chapter, and upon a showing that such person has engaged, or is about to engage, in any such activity, a permanent or temporary injunction, restraining order, or other appropriate order may be issued by the court))~~ or a rule or order under this chapter, the director, through the attorney general, may bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof. Upon proper showing, injunctive relief or temporary restraining orders shall be granted by the court and a receiver or conservator may be appointed.

(4) The attorney general and the several prosecuting attorneys throughout the state may prosecute proceedings brought pursuant to this chapter upon notification of the director.

Sec. 19. RCW 18.44.175 and 1977 ex.s. c 156 s 20 are each amended to read as follows:

If the director determines after notice and hearing that a person has:

(1) Violated any provision of this chapter; or

(2) Directly, or through an agent or employee, engaged in any false, unfair and deceptive, or misleading;

(a) A ~~Advertising~~ or promotional activity(~~(:)~~); or

(b) B ~~Business~~ practices; or

(3) Violated any lawful order(~~(:)~~) or rule(~~(-or regulation)~~) of the director; the director may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.

If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. ~~((Prior to issuing the temporary cease and desist order, the director, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a temporary cease and desist order to the person.))~~ Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether or not the order becomes permanent.

~~((If it appears that a person has engaged or is about to engage 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, regulation, or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The director shall not be required to post a bond in any court proceedings.))~~

Sec. 20. RCW 18.44.180 and 1965 c 153 s 19 are each amended to read as follows:

No person engaged in the business or acting in the capacity of an escrow agent may bring or maintain any action in any court of this state for the collection or compensation for the performances of any services entered upon after December 31, 1965, for which ~~((registration))~~ licensing is required under this chapter without alleging and proving that he or she was a duly ~~((certificated))~~ licensed escrow agent at the time of commencement of such services.

Sec. 21. RCW 18.44.200 and 1977 ex.s. c 156 s 11 are each amended to read as follows:

~~((No))~~ Every licensed escrow agent shall ~~((engage in the business of handling escrow transactions unless such))~~ ensure that all escrow transactions are supervised

by a licensed (~~(=)~~) escrow officer (~~("= PROVIDED, That (1))~~). In the case of a partnership, ((one licensed partner)) the designated escrow officer shall be a partner in the partnership and shall act on behalf of the partnership((= (2)). In the case of a corporation, ((one licensed officer thereof)) the designated escrow officer shall be an officer of the corporation and shall act on behalf of the corporation((= and (3)) ~~each branch office shall be required to have at least one licensed escrow officer designated by the escrow agent~~). The designated escrow officer shall be responsible for that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent. Responsibility for the conduct of any licensed escrow ((agent, escrow)) officer((s, or branch escrow officers)) covered by this chapter shall rest with the designated escrow officer or designated branch escrow officer having direct supervision of such person's escrow activities. The branch designated escrow officer shall bear responsibility for ((persons operating under each branch escrow officer's)) supervision of all other licensed escrow officers or other persons performing escrow transactions at a branch escrow office.

Sec. 22. RCW 18.44.260 and 1977 ex.s. c 156 s 16 are each amended to read as follows:

(1) The director may, upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.050 (~~(as now or hereafter amended, by order)~~) (as recodified by this act), deny, suspend, decline to renew, or revoke the (~~(certificate of registration or))~~ license of any escrow agent or escrow officer if ~~((he))~~ the director finds that the applicant or any partner, officer, director, controlling person, or employee (~~(is guilty))~~ has committed any of the following acts or engaged in any of the following conduct:

~~((1))~~ (a) Obtaining a license (~~(or registration))~~ by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

~~((2))~~ (b) Violating any of the provisions of this chapter or any lawful rules (~~(or regulations))~~ made by the director pursuant thereto.

~~((3))~~ (c) The commission of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

~~((4))~~ (d) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee or agent or any partner, officer, director, controlling person, or employee acts to his or her injury or damage.

~~((5))~~ (e) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract, or other

evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

~~((6))~~ (f) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of, the director or his or her authorized representatives.

~~((7))~~ (g) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

~~((8))~~ (h) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal.

(i) Committing acts or engaging in conduct that demonstrates the applicant or licensee to be incompetent or untrustworthy, or a source of injury and loss to the public.

(2) Any conduct of an applicant or licensee that constitutes grounds for enforcement action under this chapter is sufficient regardless of whether the conduct took place within or outside of the state of Washington.

(3) In addition to or in lieu of a license suspension, revocation, or denial, the director may assess a fine of up to one hundred dollars per day for each day's violation of this chapter or rules adopted under this chapter and may remove and/or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer.

Sec. 23. RCW 18.44.280 and 1977 ex.s. c 156 s 21 are each amended to read as follows:

The director may:

(1) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule(~~(, regulation,)~~) or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; or

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by ~~((him))~~ the director may administer oaths or affirmations, and upon his or her own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the administrative procedure act, chapter 34.05 RCW.

Sec. 24. RCW 18.44.290 and 1995 c 238 s 4 are each amended to read as follows:

Any person desiring to be ~~((an))~~ a licensed escrow officer shall meet the requirements of ~~((RCW 18.44.220))~~ section 4 of this act as provided in this chapter. The applicant shall make application endorsed by a ~~((certificated))~~ licensed escrow agent to the director on a form to be prescribed and furnished by the director. Such application must be received by the director within one year of passing the escrow officer examination. With this application the applicant shall:

- (1) Pay a license fee as set forth by rule; and
- (2) Furnish such proof as the director may require concerning his or her honesty, truthfulness, good reputation, and identity, including but not limited to fingerprints, residential address and telephone number, qualifications and employment history, a personal credit report, and any other information required under RCW 18.44.030 (as recodified by this act).

Sec. 25. RCW 18.44.300 and 1985 c 340 s 5 are each amended to read as follows:

~~((Any person desiring to be an escrow officer must include with the application a license fee.))~~ Every escrow officer license issued under the provisions of this chapter expires on the date one year from the date of issue which date will henceforth be the renewal date. An annual license renewal fee in the same amount must be paid on or before each renewal date: **PROVIDED**, That licenses issued or renewed prior to September 21, 1977, shall use the existing renewal date as the date of issue. If the application for a ~~((renewal))~~ license renewal is not received by the director on or before the renewal date such license is expired. The license may be reinstated at any time prior to the next succeeding renewal date following its expiration upon the payment to the director of the annual renewal fee then in default. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency. Licenses not renewed within one year of the renewal date then in default shall be canceled. A new license may be obtained by satisfying the procedures and qualifications for initial licensing, including where applicable successful completion of examinations.

Sec. 26. RCW 18.44.310 and 1989 c 51 s 1 are each amended to read as follows:

The license of ~~((an))~~ a licensed escrow officer shall be retained and displayed at all times by the ~~((certificated))~~ licensed escrow agent~~((and))~~. When the officer ceases for any reason to represent the agent, the license shall cease to be in force.

~~((Notice of such termination shall be given by the next regular business day by the escrow agent to the director and such notice shall be accompanied by and include the surrender of the escrow officer's license. Failure to notify the director of such termination after demand by the affected escrow officer shall work a forfeiture of the escrow agent's certificate of registration))~~ Within three business days of termination of the licensed escrow officer's employment, the licensed escrow agent shall notify the director that the terminated escrow officer no longer represents the escrow agent. Within ten business days of termination of the licensed escrow officer's employment, the licensed escrow agent shall deliver the surrendered escrow officer license to the director. Failure to notify the director within three business days or deliver the surrendered license to the director within ten business days shall, at the discretion of the director, subject the escrow agent to penalties under RCW 18.44.260 (as recodified by this act).

The director may hold the licensed escrow officer's license inactive upon ~~((application of the escrow officer. PROVIDED, That the escrow officer shall pay the annual renewal fee. Such))~~ notification of termination by the escrow agent or designated escrow officer. The licensed escrow officer shall pay the renewal fee annually to maintain an inactive license. An inactive license may be activated upon application of a ((certificated)) licensed escrow agent on a form provided by the director and the payment of a fee. If the licensed escrow officer continues to meet the requirements of licensing in RCW 18.44.290 (as recodified by this act), the director shall thereupon issue a new license for the unexpired term ((if such)) of the licensed escrow officer ((is otherwise entitled thereto)). An escrow officer's first license shall not be issued inactive.

Sec. 27. RCW 18.44.320 and 1977 ex.s. c 156 s 25 are each amended to read as follows:

(1) The director has the power and broad administrative discretion to administer and interpret this chapter to facilitate the delivery of services to citizens of this state by escrow agents and others subject to this chapter.

(2) The director may issue rules and regulations to govern the activities of ((certificated)) licensed escrow agents and escrow officers. The director shall enforce all laws(;) and rules((-and regulations relative)) relating to the ((registration)) licensing of escrow agents and ((licensing of)) escrow officers and fix the time and places for holding examinations of applicants for licenses and prescribe the method of conducting the examinations. The director may hold hearings and suspend or revoke the ((registration or)) licenses of violators and may deny, suspend, or revoke the authority of an escrow officer to act as the designated escrow officer of a person who commits violations of this chapter or of the rules ((and regulations)) under this chapter.

Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act.

Sec. 28. RCW 18.44.330 and 1977 ex.s. c 156 s 26 are each amended to read as follows:

~~((An))~~ (1) A licensed escrow agent shall not operate an escrow business in a location other than the location set forth on the agent's ~~((certificate of registration))~~ license or branch office license issued by the director. The licensed escrow agent may apply to the director for authority to establish one or more branch offices under the same name as the main office.

(2) Each branch office operated by a licensed escrow agent shall be supervised by a licensed escrow officer designated by the licensed escrow agent as the designated branch escrow officer for that branch.

(3) Any person desiring to operate a branch escrow office shall make application on a form provided by the director and pay a fee as set forth in ~~((this chapter))~~ rule by the director. Such application shall identify the ~~((natural person))~~ licensed escrow officer designated as the designated branch escrow officer to supervise the agent's escrow activity at the ~~((escrow agent))~~ branch office.

(4) No escrow agent branch office ~~((certificate of registration))~~ license shall be issued until the applicant has satisfied the director that the escrow activity of ~~((said))~~ the branch meets all financial responsibility requirements governing the conduct of escrow activity.

Sec. 29. RCW 18.44.340 and 1977 ex.s. c 156 s 27 are each amended to read as follows:

Upon the filing of the application for an escrow agent branch office and satisfying the requirements of this chapter, the director shall issue and deliver to the applicant a ~~((certificate of registration))~~ license to engage in the business of an escrow agent at the branch location set forth on the ~~((certificate))~~ license.

Sec. 30. RCW 18.44.350 and 1977 ex.s. c 156 s 28 are each amended to read as follows:

Each escrow agent ~~((and))~~ license, each escrow agent branch office ~~((certificate of registration))~~ license, and each escrow officer license ~~((when issued,))~~ shall be issued in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee ~~((or registrant))~~;
- (2) The name under which the applicant will do business;
- (3) The address at which the applicant will do business;
- (4) The expiration date of the license ~~((or registration))~~; and
- (5) In the case of a corporation, partnership, or branch office, the name of the ~~((natural person who is))~~ designated ~~((to act as the))~~ escrow officer ~~((on behalf thereof))~~ or designated branch escrow officer.

Sec. 31. RCW 18.44.360 and 1988 c 178 s 2 are each amended to read as follows:

The director shall, within thirty days after the written request of the escrow commission, hold a public hearing to determine whether the fidelity bond, surety

bond, and/or the errors and omissions policy specified in RCW 18.44.050 (~~as now or hereafter amended~~) (as recodified by this act) is reasonably available to a substantial number of (~~certified~~) licensed escrow agents. If the director determines and the insurance commissioner concurs that such bond or bonds and/or policy is not reasonably available, the director shall waive the requirements for such bond or bonds and/or policy for a fixed period of time.

Sec. 32. RCW 18.44.370 and 1987 c 471 s 4 are each amended to read as follows:

After a written determination by the director, with the consent of the insurance commissioner, that the fidelity bond, the surety bond, and/or the errors and omissions policy required under RCW 18.44.050 (~~as now or hereafter amended~~) (as recodified by this act) is cost-prohibitive, or after a determination as provided in RCW 18.44.360 (as recodified by this act) that such bond or policy is not reasonably available, (~~upon the request of~~) an association comprised of (~~certified~~) licensed escrow agents, (~~the director,~~) with the consent of the insurance commissioner, may (~~authorize such association to~~) organize a (~~mutual~~) corporation pursuant to chapter 24.06 RCW, exempt from the provisions of Title 48 RCW, for the purpose of insuring or self-insuring against claims arising out of escrow transactions (~~if, in the director's judgment, there is a substantial likelihood that the corporation will operate for the benefit of the public and if the corporation shall have established rules, procedures, and reserves which satisfy the director that it will operate in a financially responsible manner which provides a substantial probability that it shall be able to pay any claims made against the corporation, up to the limits of financial responsibility as provided in RCW 18.44.050, as now or hereafter amended~~). The (~~director, with the consent of the~~) insurance commissioner(;) may limit the authority of the corporation to the insuring or self-insuring of claims which would be within the coverage specified in RCW 18.44.050 (as recodified by this act). The (~~director, with the consent of the~~) insurance commissioner(;) may revoke the authority of the corporation to transact insurance or self-insurance if he or she determines, pursuant to chapter 34.05 RCW, that the corporation is not acting in a financially responsible manner or for the benefit of the public.

Sec. 33. RCW 18.44.145 and 1988 c 178 s 3 are each amended to read as follows:

(1) "Real property lender" as used in this section means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, or partnership that makes loans secured by real property located in this state.

(2) No real property lender, escrow agent, or officer or employee of any escrow agent or real property lender may give or agree to pay or give any money, service, or object of value to any real estate agent or broker, to any real property lender, or to any officer or employee of any agent, broker, or lender in return for the referral of any real estate escrow services. Nothing in this subsection prohibits

the payment of fees or other compensation permitted under the federal Real Estate Settlement Procedures Act as amended (12 U.S.C. sections 2601 through 2617).

(3) ~~((A violation of this section constitutes a violation of RCW 19.86.020, and any person harmed in his or her business or property is entitled to the remedies provided under RCW 19.86.090.))~~ The legislature finds that the practices governed by this subsection are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this section 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. 34. A new section is added to chapter 48.29 RCW to read as follows:

(1) Every title insurance company and title insurance agent conducting the business of an escrow agent as defined in RCW 18.44.010 (as recodified by this act) and exempt from licensing under RCW 18.44.020(6) (as recodified by this act) shall:

(a) Keep adequate records, as determined by rule by the insurance commissioner, of all transactions handled by the title insurance company or title insurance agent, including itemization of all receipts and disbursements of each transaction. These records shall be maintained in this state, unless otherwise approved by the insurance commissioner, for a period of six years from completion of the transaction. These records shall be open to inspection by the insurance commissioner or his or her authorized representatives;

(b) Keep separate escrow fund account or accounts in a recognized Washington state depository or depositories authorized to receive funds, in which shall be kept separate and apart and segregated from the title insurance company or title insurance agent's own funds, all funds or moneys of clients which are being held by the title insurance company or title insurance agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof; and

(c) Not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. A title insurance company or title insurance agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

(i) Cash;

(ii) Interbank electronic transfers such that the funds are unconditionally received by the title insurance company or the title insurance agent or the title insurance company or title insurance agent's depository;

(iii) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state;

(iv) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or

(v) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the federal expedited funds availability act, 12 U.S.C. Sec. 4001 et seq.

(2) For purposes of this section, "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

(3) Violation of this section shall subject a title insurance company or title insurance agent to penalties as prescribed in Title 9A RCW and remedies as provided in chapter 19.86 RCW and shall constitute grounds for suspension or revocation of the certificate of authority of a title insurance company or the license of a title insurance agent. In addition, a violation of this section may subject a title insurance company or a title insurance agent to penalties as prescribed in this title.

NEW SECTION. Sec. 35. A new section is added to chapter 48.29 RCW to read as follows:

It is a violation of this chapter for any title insurance company and title insurance agent in the conduct of the business of an escrow agent as defined in RCW 18.44.010 (as recodified by this act) and exempt from licensing under RCW 18.44.020(6) (as recodified by this act) to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the title insurance company or title insurance agent;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business as required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, or employees the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of a title insurance company or title insurance agent conducting an escrow business, including an order to cease and desist or other order of the insurance commissioner; or

(10) Fail to make any report or statement lawfully required by the insurance commissioner or other public official.

NEW SECTION. Sec. 36. The following acts or parts of acts are each repealed:

(1) RCW 18.44.040 and 1977 ex.s. c 156 s 4, 1971 ex.s. c 245 s 3, & 1965 c 153 s 4;

(2) RCW 18.44.065 and 1977 ex.s. c 156 s 18;

(3) RCW 18.44.150 and 1965 c 153 s 16;

(4) RCW 18.44.220 and 1985 c 340 s 4, 1977 ex.s. c 156 s 13, & 1971 ex.s. c 245 s 9; and

(5) RCW 18.44.240 and 1977 ex.s. c 156 s 14 & 1971 ex.s. c 245 s 11.

NEW SECTION. Sec. 37. The following sections are codified or recodified within chapter 18.44 RCW in the following order:

(1) The following section is recodified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Definitions":

RCW 18.44.010

(2) The following sections are codified or recodified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Licensing":

RCW 18.44.020

RCW 18.44.030

RCW 18.44.330

RCW 18.44.340

RCW 18.44.067

RCW 18.44.200

RCW 18.44.290

RCW 18.44.300

RCW 18.44.310

RCW 18.44.350

RCW 18.44.080

RCW 18.44.090

RCW 18.44.100

RCW 18.44.110

RCW 18.44.120

RCW 18.44.140

RCW 18.44.180

RCW 18.44.250

Section 4 of this act

(3) The following sections are recodified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Bonding":

RCW 18.44.050

RCW 18.44.060

RCW 18.44.360

RCW 18.44.370

RCW 18.44.375

RCW 18.44.380

RCW 18.44.385

RCW 18.44.390

RCW 18.44.395

RCW 18.44.398

(4) The following section is codified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Prohibited Practices":

Section 9 of this act

(5) The following sections are recodified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Enforcement":

RCW 18.44.070

RCW 18.44.320

RCW 18.44.280

RCW 18.44.260

RCW 18.44.175

RCW 18.44.145

RCW 18.44.125

RCW 18.44.130

RCW 18.44.190

RCW 18.44.170

RCW 18.44.160

(6) The following sections are recodified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Escrow Commission":

RCW 18.44.208

RCW 18.44.215

(7) The following sections are recodified and designated as a subchapter of chapter 18.44 RCW under the subchapter designation "Miscellaneous":

RCW 18.44.900

RCW 18.44.910

RCW 18.44.920

RCW 18.44.921

RCW 18.44.922

Passed the House March 16, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 31

[House Bill 1106]

PRIZE PROMOTIONS—DISCLOSURES

AN ACT Relating to disclosures made for prize promotions; and amending RCW 19.170.030.

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

Sec. 1. RCW 19.170.030 and 1991 c 227 s 3 are each amended to read as follows:

(1) The offer must identify the name and address of the promoter and the sponsor of the promotion.

(2) The offer must state the verifiable retail value of each prize offered in it.

(3)(a) If an element of chance is involved, each offer must state the odds the participant has of being awarded each prize. The odds must be expressed in Arabic numerals, in ratio form, based on the total number of prizes to be awarded and the total number of offers distributed.

(b) If the promotion identified in the offer is part of a collective promotion with more than one participating sponsor, that fact must be clearly and conspicuously disclosed.

(c) The odds must be stated in a manner that will not deceive or mislead a person about that person's chance of being awarded a prize.

(4) The verifiable retail value and odds for each prize must be stated in immediate proximity on the same page with the first listing of each prize in type at least as large as the typeface used in the standard text of the offer.

(5) If a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded, may have been awarded, or will be awarded, the requirement or invitation must be conspicuously disclosed under subsection (7) of this section to the person in the offer in **bold-face** type at least as large as the typeface used in the standard text of the offer (~~on the first page of the offer~~).

(6) No item in an offer may be denominated a prize, gift, award, premium, or similar term that implies the item is free if, in order to receive the item or use the item for its intended purpose the intended recipient is required to spend any sum of money, including but not limited to shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. The payment of any applicable state or federal taxes by a recipient directly to a government entity is not a violation of this section.

(7) If the receipt of the prize is contingent upon certain restrictions or qualifications that the recipient must meet, or if the use or availability of the prize

is restricted or qualified in any way, including, but not limited to restrictions on travel dates, travel times, classes of travel, airlines, accommodations, travel agents, or tour operators, the restrictions or qualifications must be disclosed on the offer in immediate proximity on the same page with the first listing of the prize in type at least as large as the typeface used in the standard text of the offer or, in place thereof, the following statement printed in direct proximity to the prize or prizes awarded in type at least as large as the typeface used in the standard text of the offer:

~~((“Major restrictions may apply to the use, availability, or receipt of the prize(s) awarded.”))~~ “Details and qualifications for participation in this promotion may apply.”

This statement must be followed by a disclosure, in the same size type as the statement, indicating where in the offer the restrictions may be found. The restrictions must be printed in type at least as large as the typeface used in the standard text of the offer.

(8) If a prize will not be awarded or given unless a winning ticket, the offer itself, a token, number, lot, or other device used to determine winners in a particular promotion is presented to a promoter or a sponsor, this fact must be clearly stated on the first page of the offer.

Passed the House March 4, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 32

[House Bill 1139]

JUDICIAL REMOVAL OF A DIRECTOR OF A NONPROFIT CORPORATION

AN ACT Relating to judicial removal of a director of a nonprofit corporation from office; and adding a new section to chapter 24.03 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 24.03 RCW to read as follows:

(1) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced by the corporation if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

Passed the House February 12, 1999.
Passed the Senate April 6, 1999.
Approved by the Governor April 19, 1999.
Filed in Office of Secretary of State April 19, 1999.

CHAPTER 33

[Substitute House Bill 1149]

FILING FINANCIAL STATEMENTS UNDER THE INSURANCE CODE

AN ACT Relating to accounting standards under the insurance code; adding a new section to chapter 48.05 RCW; adding a new section to chapter 48.36A RCW; and adding a new section to chapter 48.43 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.05 RCW to read as follows:

Every insurer holding a certificate of authority from the commissioner shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law.

NEW SECTION. Sec. 2. A new section is added to chapter 48.36A RCW to read as follows:

Every fraternal benefit society holding a certificate of authority shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law.

NEW SECTION. Sec. 3. A new section is added to chapter 48.43 RCW to read as follows:

Every health carrier holding a registration from the commissioner shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law.

Passed the House February 22, 1999.
Passed the Senate April 7, 1999.
Approved by the Governor April 19, 1999.
Filed in Office of Secretary of State April 19, 1999.

CHAPTER 34

[House Bill 1216]

SECRETARY OF HEALTH'S ADMINISTRATIVE AUTHORITY--TERMINATION REMOVED

AN ACT Relating to removing the termination of the secretary's authority for administrative procedures; and amending RCW 43.70.280.

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

Sec. 1. RCW 43.70.280 and 1998 c 29 s 1 are each amended to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, shall establish by rule the administrative procedures, administrative requirements, and fees for initial issue, renewal, and reissue of a credential for professions under RCW 18.130.040, including procedures and requirements for late renewals and uniform application of late renewal penalties. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary which provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary of health may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department of health adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

~~((3) Unless extended by the legislature, effective March 1, 1999, the authority of the secretary to establish administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential, including procedures and requirements for late renewals and uniform application of late renewal penalties, shall cease to apply to those health professions otherwise regulated by a board or commission with statutory rule-making authority. If not extended by the legislature, such authority shall transfer to the respective board or~~

~~commission. Rules adopted by the secretary under this section shall remain in effect after March 1, 1999, until modified or repealed in accordance with the provisions of chapter 34.05 RCW.))~~

Passed the House March 4, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 35

[House Bill 1221]

LEWIS AND CLARK BICENTENNIAL ADVISORY COMMITTEE

AN ACT Relating to the Lewis and Clark bicentennial advisory committee; creating new sections; repealing RCW 27.34.340; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The Lewis and Clark bicentennial advisory committee is created under the auspices of the Washington state historical society. The committee shall consist of fifteen members, as follows:

- (1) Six citizen members, at least three of whom must be enrolled members of a Washington Indian tribe, who shall be appointed by the governor;
- (2) The president of the Washington state historical society;
- (3) The director of the Washington state parks and recreation commission;
- (4) The secretary of the Washington state department of transportation;
- (5) The director of the Washington state department of community, trade, and economic development;
- (6) Four members of the Washington state legislature, one from each caucus in the senate and the house of representatives as designated by each caucus; and
- (7) The chair of the Lewis and Clark trail advisory committee.

NEW SECTION. **Sec. 2.** (1) The Lewis and Clark bicentennial committee shall coordinate and provide guidance to Washington's observance of the bicentennial of the Lewis and Clark expedition. The committee may:

- (a) Cooperate with national, regional, state-wide, and local events promoting the bicentennial;
- (b) Assist, plan, or conduct bicentennial events;
- (c) Engage in or encourage fund-raising activities including revenue-generating enterprises, as well as the solicitation of charitable gifts, grants, or donations;
- (d) Promote public education concerning the importance of the Lewis and Clark expedition in American history, including the role of Native people in making the expedition a success;
- (e) Coordinate interagency participation in the observance; and
- (f) Perform other related duties.

(2) The committee is attached to the Washington state historical society for administrative purposes. Accordingly, the society shall:

(a) Direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the committee;

(b) Include the committee's budgetary requests in the society's departmental budget;

(c) Collect all nonappropriated revenues for the committee and deposit them in the proper fund or account;

(d) Provide staff support for the committee;

(e) Print and disseminate for the committee any required notices, rules, or orders adopted by the committee; and

(f) Allocate or otherwise provide office space to the committee as may be necessary.

NEW SECTION. Sec. 3. The Lewis and Clark bicentennial account is created in the state treasury. Expenditures from the account may only be expended to finance the activities of the Lewis and Clark bicentennial committee and all expenditures must be authorized by the director of the Washington state historical society or the director's designee. Moneys in the account may only be spent after appropriation. The account is subject to the allotment procedures under chapter 43.88 RCW.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act expire June 30, 2007.

NEW SECTION. Sec. 5. RCW 27.34.340 and 1996 c 65 s 1 are each repealed.

Passed the House March 12, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 36

[Substitute House Bill 1289]

FEDERAL UNEMPLOYMENT TRUST FUND—USE OF EXCESS MONEYS

AN ACT Relating to conforming unemployment compensation statutes with federal law; amending RCW 50.16.030; and creating a new section.

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

Sec. 1. RCW 50.16.030 and 1983 1st ex.s. c 7 s 1 are each amended to read as follows:

(1) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money

credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor(;;);

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law(;;); and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited

and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

NEW SECTION. Sec. 2. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

Passed the House March 11, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 37

[House Bill 1297]

EARNED EARLY RELEASE TIME

AN ACT Relating to earned early release time; and amending RCW 9.94A.150.

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

Sec. I. RCW 9.94A.150 and 1996 c 199 s 2 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. In the case of an offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, shall not receive any good time credits or earned early release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence;

(2) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(6) The governor may pardon any offender;

(7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(8) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.120(4).

Passed the House February 24, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 38

[House Bill 1372]

BIRTH DEFECTS SURVEILLANCE—REPEAL OF REDUNDANT PROVISIONS

AN ACT Relating to birth defects surveillance; creating a new section; and repealing RCW 70.58.300, 70.58.310, 70.58.320, 70.58.322, 70.58.324, 70.58.330, 70.58.332, 70.58.334, 70.58.338, 70.58.340, and 70.58.350.

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

NEW SECTION. Sec. 1. Existing statutes related to the birth defects surveillance are redundant to other reportable conditions rules. Repeal of these sections will allow for consolidation of birth defects surveillance with other notifiable conditions. This is expected to improve the quality and efficiency of reporting for practitioners as well as health systems.

NEW SECTION. Sec. 2. The following acts or parts of acts are each repealed:

(1) RCW 70.58.300 and 1959 c 177 s 1;

(2) RCW 70.58.310 and 1991 c 3 s 344, 1979 e 141 s 110, & 1959 c 177 s 2;

(3) RCW 70.58.320 and 1991 c 3 s 345, 1984 c 156 s 1, 1979 c 141 s 111, & 1959 c 177 s 3;

(4) RCW 70.58.322 and 1984 c 156 s 2;

(5) RCW 70.58.324 and 1984 c 156 s 3;

(6) RCW 70.58.330 and 1984 c 156 s 4 & 1959 c 177 s 4;

(7) RCW 70.58.332 and 1984 c 156 s 5;

(8) RCW 70.58.334 and 1984 c 156 s 6;

(9) RCW 70.58.337 and 1984 c 156 s 7;

(10) RCW 70.58.340 and 1991 c 3 s 346, 1979 c 141 s 112, & 1959 c 177 s 5; and

(11) RCW 70.58.350 and 1959 c 177 s 6.

Passed the House February 24, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 39

[House Bill 1542]

RECORDING OF SURVEYS BY A COUNTY AUDITOR

AN ACT Relating to the recording of surveys by a county auditor; and amending RCW 58.09.050 and 58.09.110.

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

Sec. 1. RCW 58.09.050 and 1973 c 50 s 5 are each amended to read as follows:

The records of survey to be filed under authority of this chapter shall be processed as follows:

(1) ~~((Surveys which qualify under RCW 58.09.040(1) shall be a map, legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth, or equivalent, eighteen by twenty-four inches, or of a size as required by the county auditor. If ink is used on polyester base film, the ink shall be coated with a suitable substance to assure permanent legibility.))~~ (a) The record of survey filed under RCW 58.09.040(1) shall be an original map, eighteen by twenty-four inches, that is legibly drawn in black ink on mylar and is suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(b) The following are allowable formats for the original that may be used in lieu of the format set forth under (a) of this subsection:

(i) Photo mylar with original signatures;

(ii) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. This format is only allowed in those counties that are excepted from permanently storing the original document as required in RCW 58.09.110(5);

(iii) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

A two inch margin (~~(shall be provided)~~) on the left edge and a one-half inch margin (~~(shall be provided at the)~~) on other edges of the map shall be provided. The auditor shall reject for recording any maps not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(2) Information required by RCW 58.09.040(2) shall be (~~(recorded)~~) filed on a standard form eight and one-half inches by fourteen inches (~~(which shall be)~~) as designed and prescribed by the (~~(bureau of surveys and maps)~~) department of natural resources. The auditor shall reject for recording any records of corner information not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures. An electronic version of the standard form may be filed if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(3) Two legible prints of each record of survey (~~(and records of monuments and accessories)~~) as required under the provisions of this chapter shall be furnished to the county auditor in the county in which the survey is to be recorded. (~~(The auditor shall keep one copy for his records and shall send the second to the bureau of surveys and maps at Olympia, Washington, with the auditor's record number thereon.)~~) The auditor, in those counties using imaging systems, may require only the original, and fewer prints, as needed, to meet the requirements of their duties. If any of the prints submitted are not suitable for scanning or microfilming the auditor shall not record the original.

(4) Legibility requirements are set forth in the recorder's checklist under RCW 58.09.110.

Sec. 2. RCW 58.09.110 and 1973 c 50 s 11 are each amended to read as follows:

(~~The record of survey and/or record of corner information filed with the county auditor of any county shall be securely fastened by him into suitable books provided for that purpose.~~

—He)) The auditor shall accept for recording those records of survey and records of corner information that are in compliance with the recorder's checklist as jointly developed by a committee consisting of the survey advisory board and two representatives from the Washington state association of county auditors. This checklist shall be adopted in rules by the department of natural resources.

(1) The auditor shall keep proper indexes of such record of survey by the name of owner and by quarter-quarter section, township, and range, with reference to other legal subdivisions.

~~(He)~~ (2) The auditor shall keep proper indexes of the record of corner information by section, township, and range.

~~(The original survey map shall be stored for safekeeping in a reproducible condition. It shall be proper for the auditor to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand.)~~

(3) After entering the recording data on the record of survey and all prints received from the surveyor, the auditor shall send one of the surveyor's prints to the department of natural resources in Olympia, Washington, for incorporation into the state-wide survey records repository. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the surveyor's print.

(4) After entering the recording data on the record of corner information the auditor shall send a legible copy, suitable for scanning, to the department of natural resources in Olympia, Washington. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the copy.

(5) The auditor shall permanently keep the original document filed using storage and handling processes that do not cause excessive deterioration of the document. A county may be excepted from the requirement to permanently store the original document if it has a document scanning, filming, or other process that creates a permanent, archival record that meets or surpasses the standards as adopted in rule by the division of archives and records management in chapter 434-663 or 434-677 WAC. The auditor must be able to provide full-size copies upon request. The auditor shall maintain a copy or image of the original for public reference.

(6) If the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system, the auditor may accept for recording electronic versions of the documents required by this chapter. The electronic version shall be a standard raster file format acceptable to the county.

(7) This section does not supercede other existing recording statutes.

Passed the House March 9, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 40

[Substitute House Bill 1560]

STATE TOXICOLOGY LABORATORY—TRANSFERRING POWERS, DUTIES, AND
FUNCTIONS TO THE WASHINGTON STATE PATROL

AN ACT Relating to the state toxicology laboratory; amending RCW 43.103.010, 43.103.020, 43.103.030, 43.103.090, 43.43.670, and 68.50.107; reenacting and amending RCW 66.08.180; creating a new section; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) All powers, duties, and functions of the state toxicology laboratory are transferred to the bureau of forensic laboratory services of the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of either the state toxicology laboratory or the state toxicologist pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state toxicology laboratory or the state toxicologist in carrying out the powers, functions, and duties transferred shall be delivered into the custody of the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the state toxicology laboratory or the state toxicologist for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the Washington state patrol to carry out the responsibilities of the bureau of forensic laboratory services under RCW 43.43.670.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and shall certify that determination to the state agencies concerned.

(3) All employees of the state toxicology laboratory engaged in performing the powers, functions, and duties of the state toxicology laboratory are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol to perform their usual duties upon the same terms as formerly for the state toxicology laboratory, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and pending business before the state toxicologist pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations shall remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the state toxicology laboratory shall not affect the validity of any act performed before the effective date of this section.

(6) If the apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

Sec. 2. RCW 43.103.010 and 1995 c 398 s 2 are each amended to read as follows:

The purposes of this act are declared by the legislature to be as follows:

(1) To preserve and enhance the state crime laboratory and state toxicology laboratory, which ~~((is an))~~ are essential parts of the criminal justice and death investigation systems in the state of Washington;

(2) To fund the death investigation system and to make related state and local institutions more efficient;

~~(3) ((To preserve and enhance the state toxicology laboratory which is an essential part of the criminal justice and death investigation systems in the state of Washington;~~

~~—(4))~~ To provide resources necessary for the performance, by qualified pathologists, of autopsies which are also essential to the criminal justice and death investigation systems of this state and its counties;

~~((5))~~ (4) To improve the performance of death investigations and the criminal justice system through the formal training of county coroners and county medical examiners;

~~((6))~~ (5) To establish and maintain a dental identification system; and

~~((7))~~ (6) To provide flexibility so that any county may establish a county morgue when it serves the public interest.

Sec. 3. RCW 43.103.020 and 1995 c 398 s 3 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the Washington state forensic investigations council.

(2) "Crime laboratory" means the Washington state patrol crime laboratory system created in RCW 43.43.670 and under the bureau of forensic laboratory services of the Washington state patrol.

(3) "State toxicology laboratory" means the Washington state toxicology laboratory and under the bureau of forensic laboratory services of the Washington state patrol.

Sec. 4. RCW 43.103.030 and 1995 c 398 s 4 are each amended to read as follows:

There is created the Washington state forensic investigations council. The council shall oversee the ~~((state toxicology))~~ bureau of forensic laboratory services and, ~~((together))~~ in consultation with the ~~((president))~~ chief of the ~~((University of))~~ Washington state patrol or the ~~((president's))~~ chief's designee, control the ~~((laboratory's))~~ operation and establish policies of the bureau of forensic laboratory services. The council may also study and recommend cost-efficient improvements to the death investigation system in Washington and report its findings to the legislature.

Further, the council shall, jointly with the chairperson of the pathology department of the University of Washington's School of Medicine, or the chairperson's designee, oversee the state forensic pathology fellowship program, determine the budget for the program and set the fellow's annual salary, and take those steps necessary to administer the program.

The forensic investigations council shall be actively involved in the preparation of the ~~((crime))~~ bureau of forensic laboratory ~~((and toxicology laboratory))~~ services budget(s) and shall approve the ~~((crime))~~ bureau of forensic laboratory ~~((and toxicology laboratory))~~ services budget(s) prior to ~~((their))~~ its formal submission to the office of financial management pursuant to RCW 43.88.030.

Sec. 5. RCW 43.103.090 and 1995 c 398 s 8 are each amended to read as follows:

(1) The council may:

~~((1))~~ (a) Meet at such times and places as may be designated by a majority vote of the council members or, if a majority cannot agree, by the chair;

~~((2))~~ (b) Adopt rules governing the council and the conduct of its meetings;

~~((3))~~ ~~Require reports from the state toxicologist on matters pertaining to the toxicology laboratory;~~

~~((4))~~ (c) Require reports from the chief of the Washington state patrol on matters pertaining to the ~~((crime))~~ bureau of forensic laboratory services;

~~((5))~~ ~~Be actively involved in the preparation of the crime laboratory and toxicology laboratory budgets and shall approve the crime laboratory and toxicology laboratory budgets prior to their formal submission to the office of financial management pursuant to RCW 43.88.030;~~

~~((6))~~ (d) Do anything, necessary or convenient, which enables the council to perform its duties and to exercise its powers; and

~~((7))~~ ~~Appoint a toxicologist as state toxicologist to serve at the pleasure of the council; and~~

~~((8))~~ (e) Be actively involved in the preparation of the bureau of forensic laboratory services budget and approve the bureau of forensic laboratory services budget prior to formal submission to the office of financial management pursuant to RCW 43.88.030.

(2) The council shall:

(a) Prescribe qualifications for the position of director of the bureau of forensic laboratory services, after consulting with the chief of the Washington state patrol. The council shall submit to the chief of the Washington state patrol a list containing the names of up to three persons who the council believes meet its qualifications to serve as director of the bureau of forensic laboratory services. Minimum qualifications for the director of the bureau of forensic laboratory services must include successful completion of a background investigation and polygraph examination. If requested by the chief of the Washington state patrol, the forensic investigations council shall submit one additional list of up to three persons who the forensic investigations council believes meet its qualifications. The appointment must be from one of the lists of persons submitted by the forensic investigations council, and the director of the bureau of forensic laboratory services shall report to the office of the chief of the Washington state patrol;

(b) After consulting with the chief of the Washington state patrol and the director of the bureau of forensic laboratory services, the council shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services. The appointee shall meet the minimum standards for employment with the Washington state patrol including successful completion of a background investigation and polygraph examination;

(c) Establish, after consulting with the chief of the Washington state patrol, the policies, objectives, and priorities of the bureau of forensic laboratory services, to be implemented and administered within constraints established by budgeted resources by the director of the bureau of forensic laboratory services;

(d) Set the salary for the director of the bureau of forensic laboratory services;
and

(e) Set the salary for the state toxicologist.

Sec. 6. RCW 43.43.670 and 1995 c 398 s 1 are each amended to read as follows:

(1) There is created in the Washington state patrol a ((crime)) bureau of forensic laboratory services system which is authorized to:

((+)) (a) Provide laboratory services for the purpose of analyzing and scientifically handling any physical evidence relating to any crime.

((2)) (b) Provide training assistance for local law enforcement personnel.

((The crime laboratory system shall assign priority to a request for services with due regard to whether the case involves criminal activity against persons. The Washington state forensic investigations council shall assist the crime laboratory system in devising policies to promote the most efficient use of laboratory resources consistent with this section. The forensic investigations council shall be actively involved in the preparation of the crime laboratory budget and shall approve the crime laboratory budget prior to its formal submission by the state patrol to the office of financial management pursuant to RCW 43.88.030.))

(c) Provide all necessary toxicology services requested by all coroners, medical examiners, and prosecuting attorneys.

(2) The bureau of forensic laboratory services shall assign priority to a request for services with due regard to whether the case involves criminal activity against persons. The Washington state forensic investigations council shall assist the bureau of forensic laboratory services in devising policies to promote the most efficient use of laboratory services consistent with this section. The forensic investigations council shall be actively involved in the preparation of the bureau of forensic laboratory services budget and shall approve the bureau of forensic laboratory services budget prior to its formal submission by the state patrol to the office of financial management pursuant to RCW 43.88.030.

Sec. 7. RCW 66.08.180 and 1997 c 451 s 3 and 1997 c 321 s 57 are each reenacted and amended to read as follows:

Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties and forfeitures derived under this act from ~~((class H))~~ spirits, beer, and wine restaurant licenses or ~~((class H))~~ spirits, beer, and wine restaurant licensees shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the ~~((University of))~~ Washington state patrol for the ~~((forensic investigations council to conduct the))~~ state ~~((toxicological laboratory))~~ toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for

wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for.

Sec. 8. RCW 68.50.107 and 1995 c 398 s 10 are each amended to read as follows:

There shall be established in conjunction with the (~~University of~~) chief of the Washington (~~Medical School~~) state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. (~~The laboratory~~) Toxicological services shall be funded by disbursement from the (~~class H~~) spirits, beer, and wine restaurant license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

Passed the House March 5, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 19, 1999.

Filed in Office of Secretary of State April 19, 1999.

CHAPTER 41

[Senate Bill 5114]

OSTEOPATHIC HOSPITALS—EXEMPTION FROM ANNUAL INSPECTIONS

AN ACT Relating to an exemption from annual inspections for hospitals accredited by the American osteopathic association; and amending RCW 70.41.122.

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

Sec. 1. RCW 70.41.122 and 1995 c 282 s 6 are each amended to read as follows:

Notwithstanding RCW 70.41.120, a hospital accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association is not subject to the annual inspection provided for in RCW 70.41.120 if:

(1) The department determines that the applicable survey standards of the joint commission on the accreditation of health care organizations or the American osteopathic association are substantially equivalent to its own;

(2) It has been inspected by the joint commission on the accreditation of health care organizations or the American osteopathic association within the previous twelve months; and

(3) The department receives directly from the joint commission on the accreditation of health care organizations, the American osteopathic association, or the hospital itself copies of the survey reports prepared by the joint commission on the accreditation of health care organizations or the American osteopathic association demonstrating that the hospital meets applicable standards.

Passed the Senate March 4, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 42

[Senate Bill 5196]

TRUST AND ESTATE DISPUTE RESOLUTION

AN ACT Relating to trust and estate dispute resolution; amending RCW 11.40.020, 4.16.370, 6.15.020, 11.12.120, 11.18.200, 11.28.240, 11.40.040, 11.40.140, 11.42.010, 11.42.040, 11.42.085, 11.54.080, 11.54.090, 11.68.065, 11.68.080, 11.92.140, 11.95.140, 11.98.039, 11.98.051, 11.98.055, 11.98.080, 11.98.110, 11.98.170, 11.98.200, 11.98.220, 11.98.240, 11.106.040, 11.106.050, 11.106.060, 11.108.040, 11.108.900, 11.110.120, 11.114.020, 36.18.012, 36.18.020, and 83.100.180; adding a new chapter to Title 11 RCW; creating new sections; repealing RCW 11.16.060, 11.16.070, 11.16.082, 11.16.083, 11.96.009, 11.96.020, 11.96.030, 11.96.040, 11.96.050, 11.96.060, 11.96.070, 11.96.080, 11.96.090, 11.96.100, 11.96.110, 11.96.120, 11.96.130, 11.96.140, 11.96.150, 11.96.160, 11.96.170, 11.96.180, 11.96.900, and 11.96.901; and providing an effective date.

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

PART I

GENERAL PROVISIONS

NEW SECTION. Sec. 101. SHORT TITLE.

This chapter may be known and cited as the trust and estate dispute resolution act or "TEDRA."

NEW SECTION. Sec. 102. PURPOSE. The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The chapter also provides for judicial resolution of disputes if other methods are unsuccessful.

NEW SECTION. Sec. 103. GENERAL POWER OF COURTS—LEGISLATIVE INTENT—PLENARY POWER OF THE COURT. (1) It is the

intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

NEW SECTION. Sec. 104. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of 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, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(f) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) 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;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) 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;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset.

(2) "Notice agent" has the meanings given in RCW 11.42.010.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Party" or "parties" means each of the following persons 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:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney in fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in section 305 of this act;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased 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 RCW 11.18.200.

(5) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(6) "Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(7) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(8) "Trustee" means any acting and qualified trustee of the trust.

(9) "Representative" and other similar terms refer to a person who virtually represents another under section 305 of this act.

PART II

JURISDICTION, VENUE, SITUS, LIMITATIONS

NEW SECTION. Sec. 201. ORIGINAL JURISDICTION IN PROBATE AND TRUST MATTERS—POWERS OF COURT. (1) The superior court of every county has original subject matter jurisdiction over 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;
- (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 of every county has original subject matter jurisdiction over trusts and all matters relating to trusts.

(3) The superior courts may: Probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' nonprobate assets; administer and settle matters that relate to nonprobate assets and arise under chapter 11.18 or 11.42 RCW; administer and settle all matters relating to trusts; award processes and cause to come before them all persons whom the courts deem it necessary to examine; order and cause to be issued all such writs and any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under this section.

(4) The subject matter jurisdiction of the superior court applies without regard to venue. A proceeding or action by or before a superior court is not defective or

invalid because of the selected venue if the court has jurisdiction of the subject matter of the action.

NEW SECTION. Sec. 202. VENUE IN PROCEEDINGS INVOLVING PROBATE OR TRUST MATTERS. (1) Venue for proceedings pertaining to trusts shall be:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where letters testamentary were granted to a personal representative of the estate subject to the will or, in the alternative, the superior court of the county of the situs of the trust; and

(b) For all other trusts, in the superior court of the county in which the situs of the trust is located, or, if the situs is not located in the state of Washington, in any county.

(2) Venue for proceedings subject to chapter 11.88 or 11.92 RCW shall be determined under the provisions of those chapters.

(3) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1) or (2) of this section, may be in any county in the state of Washington. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(4) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (2) of this section.

(5) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(6) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

NEW SECTION. Sec. 203. EXERCISE OF POWERS—ORDERS, WRITS, PROCESS, ETC. The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.

NEW SECTION. **Sec. 204. STATUTES OF LIMITATION.** (1)(a) An action against the trustee of an express trust for a breach of fiduciary duty must be brought within three years from the earlier of: (i) The time the alleged breach was discovered or reasonably should have been discovered; (ii) the discharge of a trustee from the trust as provided in RCW 11.98.04I or by agreement of the parties under section 402 of this act; or (iii) the time of termination of the trust or the trustee's repudiation of the trust.

(b) The provisions of (a) of this subsection apply to all express trusts, no matter when created, however it shall not apply to express trusts created before June 10, 1959, until the date that is three years after the effective date of this act.

(c) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in section 405 of this act with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in section 405 of this act; or

(B) The entry of an order by a court of competent jurisdiction under section 404 of this act approving the written agreement executed by all interested parties in accord with the provisions of section 402 of this act.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special

representative's duties or actions as special representative, the special representative shall be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

PART III JUDICIAL DISPUTE RESOLUTION

NEW SECTION. **Sec. 301.** PERSONS ENTITLED TO JUDICIAL PROCEEDINGS FOR DECLARATION OF RIGHTS OR LEGAL RELATIONS.

(1) Subject to the provisions of sections 501 through 507 of this act, any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by section 104 of this act; the resolution of any other case or controversy that arises under the Revised Code of Washington and references judicial proceedings under this title; or the determination of the persons entitled to notice under section 304 or 305 of this act.

(2) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter 11.20, 11.24, 11.28, 11.40, 11.42, or 11.56 RCW. The provisions of this chapter shall not apply to actions for wrongful death under chapter 4.20 RCW.

NEW SECTION. **Sec. 302.** JUDICIAL PROCEEDINGS. (1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

(2) A judicial proceeding under this title may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset.

(4) Subject to other applicable statutes and court rules, the clerk of each of the superior courts shall fix the time for any hearing on a matter on application by a party, and no order of the court shall be required to fix the time or to approve the form or content of the notice of a hearing;

(5) The answer to the petition and any counterclaims or cross-claims must be served on the parties or the parties' virtual representatives and filed with the court at least five days before the date of the hearing, and all replies to the counterclaims and cross-claims must be served on the parties or the parties' virtual representatives and filed with the court at least two days before the date of the hearing;

(6) Proceedings under this chapter are subject to the mediation and arbitration provisions of this chapter. Except as specifically provided in section 506 of this act, the provisions of chapter 7.06 RCW do not apply;

(7) Testimony of witnesses may be by affidavit;

(8) Unless requested otherwise by a party in a petition or answer, the initial hearing must be a hearing on the merits to resolve all issues of fact and all issues of law;

(9) Any party may move the court for an order relating to a procedural matter, including discovery, and for summary judgment, in the original petition, answer, response, or reply, or in a separate motion, or at any other time; and

(10) If the initial hearing is not a hearing on the merits or does not result in a resolution of all issues of fact and all issues of law, the court may enter any order it deems appropriate, which order may (a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter.

NEW SECTION. Sec. 304. NOTICE IN JUDICIAL PROCEEDINGS UNDER THIS TITLE REQUIRING NOTICE. (1) Subject to section 309 of this act, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure.

(2) Proof of the service or mailing required in this section must be made by affidavit or declaration filed at or before the hearing.

NEW SECTION. Sec. 305. APPLICATION OF THE DOCTRINE OF VIRTUAL REPRESENTATION. (1) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

(2) Any notice requirement in this title is satisfied if notice is given as follows:

(a) Where an interest in an estate, trust, or nonprobate asset has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had

happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, 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 might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse, distributees, heirs, issue, or other kindred of the person; and

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event.

(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(4) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented.

NEW SECTION. Sec. 306. SPECIAL NOTICE. Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150.

NEW SECTION. Sec. 307. WAIVER OF NOTICE. Notwithstanding any other provision of this title, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian of the estate or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person.

NEW SECTION. Sec. 308. COST—ATTORNEYS' FEES. (1) Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This statute shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(9).

NEW SECTION. Sec. 309. APPOINTMENT OF GUARDIAN AD LITEM. (1) The court, upon its own motion or upon request of one or more of the parties, 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, person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in section 302 of this act with notice as provided in this section and section 304 of this act.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from the principal of the estate or trust whose beneficiaries are represented.

NEW SECTION. Sec. 310. TRIAL BY JURY. 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 a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions.

NEW SECTION. Sec. 311. EXECUTION ON JUDGMENTS. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

NEW SECTION. Sec. 312. EXECUTION UPON TRUST INCOME OR VESTED REMAINDER—PERMITTED, WHEN. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to

the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman.

NEW SECTION. Sec. 313. APPELLATE REVIEW. An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions.

PART IV NONJUDICIAL BINDING AGREEMENTS

NEW SECTION. Sec. 401. PURPOSE. The purpose of sections 402 through 405 of this act is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law.

NEW SECTION. Sec. 402. BINDING AGREEMENT. Sections 401 through 405 of this act shall be applicable to the resolution of any matter, as defined by section 104 of this act, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that sections 401 through 405 of this act shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of section 404 of this act, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under section 403 of this act, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in section 403 of this act, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under section 305 of this act signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

NEW SECTION. Sec. 403. ENTRY OF AGREEMENT WITH THE COURT—EFFECT. (1) If a special representative has not commenced a proceeding for approval of the agreement under section 404 of this act, any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. However, the agreement or a memorandum of its terms may not be

filed within thirty days of the agreement's execution by all parties without the written consent of the special representative. The person filing the agreement or memorandum shall within five days of the filing mail or deliver a copy of the agreement and a notice of the filing to each party whose address is known. Proof of mailing or delivery of the notice must be filed with the court. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust. Notice must be in substantially the following form.

CAPTION
OF CASE

NOTICE OF FILING OF
AGREEMENT OR MEMORANDUM
OF AGREEMENT

Notice is hereby given that the attached document or a memorandum summarizing its provisions was filed by the undersigned in the above entitled court on . . .

DATED:

.....
(Party or party's legal representative)

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust.

(3) If all parties or their virtual representatives waive the notice required by this section, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust effective upon the date of filing.

NEW SECTION. **Sec. 404. JUDICIAL APPROVAL OF AGREEMENT.** Within thirty days of execution of the agreement by all parties, the special representative may note a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court's determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect.

NEW SECTION. **Sec. 405. SPECIAL REPRESENTATIVE.** (1)(a) The personal representative or trustee may petition the court having jurisdiction over

the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and: (i) Who is a minor; (ii) who is incompetent or disabled; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

(b) The special representative may enter into a binding agreement 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 are not in conflict. The petition and order appointing the special representative may be in the following form:

CAPTION
OF CASE

PETITION FOR APPOINTMENT
OF SPECIAL REPRESENTATIVE
UNDER SECTION 405 OF THIS ACT

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with section 405 of this act and shows the court as follows:

1. Petitioner. Petitioner . . . is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument).

2. Issue Concerning (Estate) (Trust) Administration. A question concerning administration of the (estate) (trust) has arisen as to (describe issue, for example: related to interpretation, construction, administration, distribution). The issues are appropriate for determination under section 405 of this act.

3. Beneficiaries. The beneficiaries of the (estate) (trust) include persons who are unborn, unknown, or unascertained persons, or who are under eighteen years of age.

4. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen concerning the (estate) (trust). Petitioner believes that proceeding in accordance with the procedures permitted under sections 401 through 405 of this act would be in the best interests of the (estate) (trust) and the beneficiaries.

5. Request of Court. Petitioner requests that . . . , . . . an attorney licensed to practice in the State of Washington.

(OR)

. . . . an individual with special skill or training in the administration of estates or trusts

be appointed special representative for those beneficiaries who are not yet adults, as well as for the unborn, unknown, and unascertained beneficiaries, as provided under section 405 of this act.

DATED this . . . day of

.....
(Petitioner or petitioner's
legal representative)

CAPTION
OF CASE

ORDER FOR APPOINTMENT
OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) described in the Petition to appoint a special representative to address the issues that have arisen concerning the (estate) (trust) and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that . . . is appointed under section 405 of this act as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in section 405 of this act. The special representative shall be discharged of responsibility with respect to the (estate) (trust) at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order shall be discharged of responsibility, subject to subsequent reappointment under section 405 of this act.

DONE IN OPEN COURT this . . . day of

.....
JUDGE/COURT COMMISSIONER

(2) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, and may not be related to a person interested in the estate or trust. The special representative is entitled to reasonable compensation for services that must be paid from the principal of the estate or trust whose beneficiaries are represented.

(3) The special representative shall be discharged from any responsibility and shall have no further duties with respect to the estate or trust or with respect to any person interested in the estate or trust, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by section 204(3)(c)(i) of this act.

PART V
PARTY-INITIATED MEDIATION AND ARBITRATION

NEW SECTION. Sec. 501. PREAMBLE. The legislature finds that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. The legislature endorses the use of dispute resolution procedures by means other than litigation. The legislature also finds that the former chapter providing for the nonjudicial resolution of trust, estate, and nonprobate disputes, chapter 11.96 RCW, has resulted in the successful resolution of thousands of disputes since 1984. The nonjudicial procedure has resulted in substantial savings of public funds by removing those disputes from the court system. Enhancement of the statutory framework supporting the nonjudicial process in chapter 11.96 RCW would be beneficial and would foster even greater use of nonjudicial dispute methods to resolve trust, estate, and nonprobate disputes. The legislature further finds that it would be beneficial to allow parties to disputes involving trusts, estates, and nonprobate assets to have access to a process for required mediation followed by arbitration using mediators and arbitrators experienced in trust, estate, and nonprobate matters. Finally, the legislature also believes it would be beneficial to parties with disputes in trusts, estates, and nonprobate matters to clarify and streamline the statutory framework governing the procedures governing these cases in the court system.

Therefore, the legislature adopts sections 502 through 507 of this act, that enhance chapter 11.96 RCW and allow required mediation and arbitration in disputes involving trusts, estates, and nonprobate matters that are brought to the courts. Sections 502 through 507 of this act also set forth specific civil procedures for handling trust and estate disputes in the court system. It is intended that the adoption of sections 502 through 507 of this act will encourage and direct all parties in trust, estate, and nonprobate matter disputes, and the court system, to provide for expeditious, complete, and final decisions to be made in disputed trust, estate, and nonprobate matters.

NEW SECTION. Sec. 502. GENERAL INTENT—PARTIES CAN AGREE OTHERWISE. The intent of sections 501 through 507 of this act is to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed first with mediation and then arbitration before formal judicial procedures may be utilized. Accordingly, any of the requirements or rights under sections 501 through 507 of this act are subject to any contrary agreement between the parties or the parties' virtual representatives.

NEW SECTION. Sec. 503. SCOPE. A party may cause the matter to be presented for mediation and then arbitration, as provided under sections 501 through 507 of this act. If a party causes the matter to be presented for resolution under sections 501 through 507 of this act, then judicial resolution of the matter,

as provided in section 203 of this act or by any other civil action, is available only by complying with the mediation and arbitration provisions of sections 501 through 507 of this act.

NEW SECTION. Sec. 504. SUPERIOR COURT—VENUE. As used in sections 501 through 507 of this act, "superior court" means: (1) Before the commencement of any legal proceedings, the appropriate superior court with respect to the matter as provided in section 201 of this act; and (2) if legal proceedings have been commenced with respect to the matter, the superior court in which the proceedings are pending.

NEW SECTION. Sec. 505. MEDIATION PROCEDURE. (1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties' virtual representatives as follows:

(a) If no hearing has been set. If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

NOTICE OF MEDIATION UNDER SECTION 505 OF THIS ACT

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under section 505 of this act:

(State nature of matter)

This matter must be resolved using the mediation procedures of section 505 of this act unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, section 505(4) of this act requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....
(Party or party's legal representative)

(b) If a hearing has been set. If a hearing on the matter has been set, by filing and serving notice in substantially the following form at least three days prior to the hearing that has been set on the matter:

NOTICE OF MEDIATION UNDER SECTION 505 OF THIS ACT

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under section 505 of this act:

(State nature of matter)

This matter must be resolved using the mediation procedures of section 505 of this act unless the court determines at the hearing set for . . . o'clock on , (identify place of already set hearing), that mediation shall not apply pursuant to section 505(3) of this act. If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.
(Party or party's legal representative)

(2) Procedure when notice of mediation served before a hearing is set. The following provisions apply when notice of mediation is served before a hearing on the matter is set:

(a) The written notice required in subsection (1)(a) of this section may be served at any time without leave of the court.

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under sections 301 through 313 of this act, and may also request that the matters in issue be decided at the hearing.

(c) The hearing on the petition objecting to mediation must be heard no later than twenty days after the filing of that petition.

(d) The party objecting to mediation must give notice of the hearing to all other parties at least ten days before the hearing and must include a copy of the petition.

At the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (i) Deciding the matter at that hearing, but only if the petition objecting to mediation contains a request for that relief, (ii) requiring arbitration, or (iii) directing other judicial proceedings.

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the

hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.

(a) If a petition objecting to mediation is not filed as provided in subsection (3) of this section, or if a court determines that mediation shall apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of qualified and acceptable mediators. If the parties cannot agree on a mediator within ten days after the list is required to be furnished, a party may petition the court to appoint a mediator. All parties may submit a list of qualified and acceptable mediators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified mediator from lists of acceptable mediators provided by the parties.

(b) A qualified mediator must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estate and trust matters, (ii) an individual, who may be an attorney, with special skill or training in the administration of trusts and estates, or (iii) an individual, who may be an attorney, with special skill or training as a mediator. The mediator may not have an interest in an affected estate, trust, or nonprobate asset, and may not be related to a party.

(5) Date for mediation. Upon designation of a mediator by the parties or court appointment of a mediator, the mediator and the parties or the parties' virtual representatives shall establish a date for the mediation. If a date cannot be agreed upon within ten days of the designation or appointment of the mediator, a party may petition the court to set a date for the mediation session.

(6) Duration of mediation. The mediation must last at least three hours unless the matter is earlier resolved.

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under section 302 of this act.

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in section 507 of this act, or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise.

NEW SECTION. Sec. 506. ARBITRATION PROCEDURE. (1) When arbitration available. Arbitration under sections 501 through 507 of this act is available only if:

(a) A party has first petitioned for mediation under section 505 of this act and such mediation has been concluded;

(b) The court has determined that mediation under section 505 of this act is not required and has not ordered that the matter be disposed of in some other manner;

(c) All of the parties or the parties' virtual representatives have agreed not to use the mediation procedures of section 505 of this act; or

(d) The court has ordered that the matter must be submitted to arbitration.

(2) Commencement of arbitration. Arbitration must be commenced as follows:

(a) If the matter is not settled through mediation under section 505 of this act, or the court orders that mediation is not required, a party may commence arbitration by serving written notice of arbitration on all other parties or the parties' virtual representatives. The notice must be served no later than twenty days after the later of the conclusion of the mediation procedure, if any, or twenty days after entry of the order providing that mediation is not required. If arbitration is ordered by the court under section 505(3) of this act, arbitration must proceed in accordance with the order.

(b) If the parties or the parties' virtual representatives agree that mediation does not apply and have not agreed to another procedure for resolving the matter, a party may commence arbitration without leave of the court by serving written notice of arbitration on all other parties or the parties' virtual representatives at any time before or at the initial judicial hearing on the matter. After the initial judicial hearing on the matter, the written notice required in subsection (1) of this section may only be served with leave of the court.

Any notice required by this section must be in substantially the following form:

NOTICE OF ARBITRATION UNDER SECTION 506 OF THIS ACT

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under section 506 of this act:

(State nature of matter)

The matter must be resolved using the arbitration procedures of section 506 of this act unless a petition objecting to arbitration is filed with the superior court within twenty days of receipt of this notice. If a petition objecting to arbitration is not filed within the twenty-day period, section 506 of this act requires you to furnish to all other parties or the parties' virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable arbitrators is as follows:)

DATED:

.
(Party or party's legal representative)

(3) Objection to arbitration. A party may object to arbitration by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The objection to arbitration may be filed at any time unless a written notice of arbitration has been served, in which case the objection to arbitration must be filed and served no later than twenty days after receipt of the written notice of arbitration. The hearing on the objection to arbitration must be heard no later than twenty days after the filing of that petition. The party objecting to arbitration must give notice of the hearing to all parties at least ten days before the hearing and shall include a copy of the petition. At the hearing, the court shall order that arbitration proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to arbitration, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, but only if the petition objecting to arbitration contains a request for such relief; or (b) directing other judicial proceedings.

(4) Selection of arbitrator; qualifications of arbitrator.

(a) If a petition objecting to arbitration is not filed as provided in subsection (3) of this section, or if a court determines that arbitration must apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of acceptable arbitrators. If the parties cannot agree on an arbitrator within ten days after the list is required to be furnished, a party may petition the court to appoint an arbitrator. All parties may submit a list of qualified and acceptable arbitrators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified arbitrator from lists of acceptable arbitrators provided by the parties.

(b) A qualified arbitrator must be an attorney licensed to practice before the courts of this state having at least five years of experience in trust or estate matters or five years of experience in litigation or other formal dispute resolution involving trusts or estates, or an individual, who may be an attorney, with special skill or training with respect to the matter. The arbitrator may be the same person selected and used as a mediator under the mediation procedures of section 505 of this act.

(5) Arbitration rules. Arbitration must be under chapter 7.06 RCW, mandatory arbitration of civil actions, as follows:

(a) Chapter 7.06 RCW, the superior court mandatory arbitration rules adopted by the supreme court, and any local rules for mandatory arbitration adopted by the superior court apply to this title. If the superior court has not adopted chapter 7.06 RCW, then the local rules for mandatory arbitration applicable in King county

apply, except all the duties of the director of arbitration must be performed by the presiding judge of the superior court.

(b) If a party has already filed a petition with the court with respect to the matter that will be the subject of the arbitration proceedings, then all other parties to the arbitration proceedings who have not yet filed a reply thereto must file a reply with the arbitrator within ten days of the date on which the arbitrator is selected or appointed.

(c) The arbitration provisions of this subsection apply to all matters in dispute. The dollar limits and restrictions to monetary damages of RCW 7.06.020 do not apply to arbitrations under this subsection. To the extent any provision in this title is inconsistent with chapter 7.06 RCW or the rules referenced in (a) of this subsection, the provisions of this title control.

(d) The compensation of the arbitrator must be set by written agreement between the parties and the arbitrator. The arbitrator must be compensated at the arbitrator's stated rate of compensation for acting as an arbitrator of disputes in trusts, estates, and nonprobate matters unless the parties or the parties' virtual representatives agree otherwise.

(e) Unless directed otherwise by the arbitrator in accord with subsection (6) of this section or section 507 of this act, or unless the matter is not resolved by arbitration and the court finally resolving the matter directs otherwise:

(i) Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration, with the details of those costs and fees to be set forth in an arbitration agreement between the arbitrator and all parties to the matter; and

(ii) A party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(f) The arbitrator and the parties shall execute a written agreement setting forth the terms of the arbitration and the process to be followed. This agreement must also contain the fee agreement provided in (d) of this subsection. A dispute as to this agreement must be resolved by the director of arbitration.

(g) The rules of evidence and discovery applicable to civil causes of action before the superior court as defined in section 504 of this act apply, unless the parties have agreed otherwise or the arbitrator rules otherwise.

(6) Costs of arbitration. The arbitrator may order costs, including reasonable attorneys' fees and expert witness fees, to be paid by any party to the proceedings as justice may require.

(7) Decision of arbitrator. The arbitrator shall issue a final decision in writing within thirty days of the conclusion of the final arbitration hearing. The final decision may be appealed by filing a notice of appeal with the superior court within thirty days of the issuance of the written decision in the arbitration proceeding. If an appeal is not filed as provided in this section, the arbitration decision is conclusive and binding on all parties.

(8) Arbitration decision may be filed with court; appeal. Any party to the arbitration may file the arbitrator's decision with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

(9) Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded costs, including expert witness fees and attorneys' fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of section 308 of this act or any other similar provision.

NEW SECTION. Sec. 507. PETITION FOR ORDER COMPELLING COMPLIANCE. If a party does not comply with any procedure of sections 501 through 506 of this act, the other party or parties may petition the superior court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with: The petition and any other actions taken after the issuance of the order to compel compliance with the order, unless the court at the hearing on the petition determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition.

PART VI CONFORMING AMENDMENTS

Sec. 601. RCW 11.40.020 and 1997 c 252 s 8 are each amended to read as follows:

(1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, as directed in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

~~((1))~~ (a) The personal representative shall first file the original of the notice with the court;

~~((2))~~ (b) The personal representative shall then cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered, and if the decedent was a

Washington resident, in the county of the decedent's residence at the time of death, if different:

~~((3))~~ (c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid; and

~~((4))~~ (d) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are commenced in a county other than the county of the decedent's residence, then notice to the creditors of the decedent as directed in RCW 11.40.030 must be filed with the superior court of the county of the decedent's residence.

Sec. 602. RCW 4.16.370 and 1985 c 11 s 3 are each amended to read as follows:

The statute of limitations for actions against a personal representative or trustee for breach of fiduciary duties is as set forth in ~~((RCW 11.96.060))~~ section 204 of this act.

Sec. 603. RCW 6.15.020 and 1997 c 20 s 1 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process

whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection shall not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in sections 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington or any political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless contrary to applicable federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an individual retirement account held in the name of or on account of the other spouse, the account holder spouse. At the death of the nonaccount holder spouse, the nonaccount holder spouse may transfer or distribute the community property interest of the nonaccount holder spouse in the account holder spouse's individual retirement account to the nonaccount holder

spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including any order entered under chapter ~~((11-96))~~ 11.— RCW (sections 101 through 507 of this act), to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonaccount holder spouse's community property interest in an individual retirement account shall be considered a person entitled to the full protection of subsection (3) of this section. The nonaccount holder spouse's consent to a beneficiary designation by the account holder spouse with respect to an individual retirement account shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonaccount holder spouse's community property interest in an individual retirement account. For purposes of this subsection, the term "nonaccount holder spouse" means the spouse of the person in whose name the individual retirement account is maintained. The term "individual retirement account" includes an individual retirement account and an individual retirement annuity both as described in section 408 of the internal revenue code of 1986, as amended, and an individual retirement bond as described in section 409 of the internal revenue code as in effect before January 1, 1984. As used in this subsection, an order of a court of competent jurisdiction includes an agreement, as that term is used under ~~((RCW 11-96-170))~~ section 402 of this act.

Sec. 604. RCW 11.12.120 and 1994 c 221 s 15 are each amended to read as follows:

(1) If a will 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))~~ 11.— RCW (sections 101 through 507 of this act).

Sec. 605. RCW 11.18.200 and 1997 c 252 s 3 are each amended to read as follows:

(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))~~ 11.— RCW (sections 101 through 507 of this act), 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.

(4) Nonprobate assets that may be responsible for the satisfaction of the decedent's general liabilities and claims abate together with the probate assets of the estate in accord with chapter 11.10 RCW.

Sec. 606. RCW 11.28.240 and 1997 c 252 s 4 are each amended to read as follows:

(1) At any time after the issuance of letters testamentary or of administration or certificate of qualification upon the estate of any decedent, any person interested in the estate as an heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or the lawyer for the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative or upon the lawyer for the personal representative, and file with the clerk of the court wherein the administration of the estate is pending, a written request stating that the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of the estate, to wit:

(a) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.

(b) Petitions for any order of solvency or for nonintervention powers.

(c) Filing of accounts.

(d) Filing of petitions for distribution.

(e) Petitions by the personal representative for family allowances and homesteads.

(f) The filing of a declaration of completion.

(g) The filing of the inventory.

(h) Notice of presentation of personal representative's claim against the estate.

(i) Petition to continue a going business.

(j) Petition to borrow upon the general credit of the estate.

(k) Petition for judicial proceedings under chapter ~~((44-96))~~ 11 RCW (sections 101 through 507 of this act).

(l) Petition to reopen an estate.

(m) Intent to distribute estate assets, other than distributions in satisfaction of specific bequests or legacies of specific dollar amounts.

(n) Intent to pay attorney's or personal representative's fees.

The requests shall state the post office address of the heir, devisee, distributee, legatee or creditor, or his or her lawyer, and thereafter a brief notice of the filing of any of the petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other tangible personal property which will incur expense or loss by keeping, shall be addressed to the heir, devisee, distributee, legatee or creditor, or his or her lawyer, at the post office address stated in the request, and deposited in the United States post office, with prepaid postage, at least ten days before the hearing of the petition, account or claim or of the proposed distribution or payment of fees; or personal service of the notices may be made on the heir, devisee, distributee, legatee, creditor, or lawyer, not less than five days before the hearing, and the personal service shall have the same effect as deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of the petition, account or claim or of the proposed distribution or payment of fees. If the notice has been regularly given, any distribution or payment of fees and any order or judgment, made in accord therewith is final and conclusive.

(2) Notwithstanding subsection (1) of this section, a request for special notice may not be made by a person, and any request for special notice previously made by a person becomes null and void, when:

(a) That person qualifies to request special notice solely by reason of being a specific legatee, all of the property that person is entitled to receive from the decedent's estate has been distributed to that person, and that person's bequest is not subject to any subsequent abatement for the payment of the decedent's debts, expenses, or taxes;

(b) That person qualifies to request special notice solely by reason of being an heir of the decedent, none of the decedent's property is subject to the laws of descent and distribution, the decedent's will has been probated, and the time for contesting the probate of that will has expired; or

(c) That person qualifies to request special notice solely by reason of being a creditor of the decedent and that person has received all of the property that the person is entitled to receive from the decedent's estate.

Sec. 607. RCW 11.40.040 and 1997 c 252 s 10 are each amended to read as follows:

(1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is one that the personal representative would discover upon exercise of reasonable diligence. The personal representative is deemed to have exercised

reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The personal representative may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The personal representative may petition the court for an order declaring that the personal representative has made a review and that any creditors not known to the personal representative are not reasonably ascertainable. The petition must be filed under (~~RCW 11.96.070~~) section 301 of this act and the notice specified under (~~RCW 11.96.100~~) section 304 of this act must also be given by publication.

Sec. 608. RCW 11.40.140 and 1997 c 252 s 21 are each amended to read as follows:

If the personal representative has a claim against the decedent, the personal representative must present the claim in the manner provided in RCW 11.40.070 and petition the court for allowance or rejection. The petition must be filed under (~~RCW 11.96.070~~) section 301 of this act. This section applies whether or not the personal representative is acting under nonintervention powers.

Sec. 609. RCW 11.42.010 and 1997 c 252 s 24 are each amended to read as follows:

(1) Subject to the conditions stated in this chapter, and if no personal representative has been appointed in this state, a beneficiary or trustee who has received or is entitled to receive by reason of the decedent's death substantially all of the decedent's probate and nonprobate assets, is qualified to give nonprobate notice to creditors under this chapter.

If no one beneficiary or trustee has received or is entitled to receive substantially all of the assets, then those persons, who in the aggregate have received or are entitled to receive substantially all of the assets, may, under an agreement under (~~RCW 11.96.170~~) section 402 of this act, appoint a person who is then qualified to give nonprobate notice to creditors under this chapter.

(2) A person or group of persons is deemed to have received substantially all of the decedent's probate and nonprobate assets if the person or the group, at the time of the filing of the declaration and oath referred to in subsection (3) of this section, in reasonable good faith believed that the person or the group had received, or was entitled to receive by reason of the decedent's death, substantially all of the decedent's probate and nonprobate assets.

(3)(a) The "notice agent" means the qualified person who:

(i) Pays a filing fee to the clerk of the superior court in a county in which probate may be commenced regarding the decedent, the "notice county", and receives a cause number; and

(ii) Files a declaration and oath with the clerk.

(b) The declaration and oath must be made in affidavit form or under penalty of perjury 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 will faithfully execute the duties of the notice agent as provided in this chapter.

(4) The following persons are not qualified to act as notice agent:

(a) Corporations, trust companies, and national banks, except: (i) Such entities as are authorized to do trust business in this state; and (ii) professional service corporations that are regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys;

(b) Minors;

(c) Persons of unsound mind;

(d) Persons who have been convicted of a felony or of a misdemeanor involving moral turpitude; and

(e) Persons who have given notice under this chapter and who thereafter become of unsound mind or are convicted of a felony or misdemeanor involving moral turpitude. This disqualification does not bar another person, otherwise qualified, from acting as successor notice agent.

(5) 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 with the court.

Sec. 610. RCW 11.42.040 and 1997 c 252 s 27 are each amended to read as follows:

(1) For purposes of RCW 11.42.050, a "reasonably ascertainable" creditor of the decedent is one that the notice agent would discover upon exercise of reasonable diligence. The notice agent is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the notice agent.

(2) If the notice agent conducts the review, the notice agent is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.42.050. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The notice agent may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The notice agent may petition the court for an order declaring that the notice agent has made a review and that any creditors not known to the notice agent are not reasonably ascertainable. The petition must be filed under (~~RCW 11.96.070~~) section 301 of this act, and the notice specified under (~~RCW 11.96.100~~) section 304 of this act must also be given by publication.

Sec. 611. RCW 11.42.085 and 1997 c 252 s 32 are each amended to read as follows:

(1) The decedent's nonprobate and probate assets that were subject to the satisfaction of the decedent's general liabilities immediately before the decedent's death are liable for claims. The decedent's probate assets may be liable, whether or not there is a probate administration of the decedent's estate.

(2) The notice agent may pay a claim allowed by the notice agent or a judgment on a claim first prosecuted against a notice agent 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, except as may be provided by agreement under (~~RCW 11.96.170~~) section 402 of this act or by court order issued in a judicial proceeding under (~~RCW 11.96.070~~) section 301 of this act.

Sec. 612. RCW 11.54.080 and 1997 c 252 s 55 are each amended to read as follows:

(1) This section applies if the party entitled to petition for an award holds exempt property that is in an aggregate amount less than that specified in RCW 6.13.030(2) with respect to lands.

(2) For purposes of this section, the party entitled to petition for an award is referred to as the "claimant." If multiple parties are entitled to petition for an award, all of them are deemed a "claimant" and may petition for an exemption of additional assets as provided in this section, if the aggregate amount of exempt property to be held by all the claimants after the making of the award does not exceed the amount specified in RCW 6.13.030(2) with respect to lands.

(3) A claimant may petition the court for an order exempting other assets from the claims of creditors so that the aggregate amount of exempt property held by the claimants equals the amount specified in RCW 6.13.030(2) with respect to lands. The petition must:

(a) Set forth facts to establish that the petitioner is entitled to petition for an award under RCW 11.54.010;

(b) State the nature and value of those assets then held by all claimants that are exempt from the claims of creditors; and

(c) Describe the nonexempt assets then held by the claimants, including any interest the claimants may have in any probate or nonprobate property of the decedent.

(4) Notice of a petition for an order exempting assets from the claims of creditors must be given in accordance with ~~((RCW 11.96.100))~~ section 304 of this act.

(5) At the hearing on the petition, the court shall order that certain assets of the claimants are exempt from the claims of creditors so that the aggregate amount of exempt property held by the claimants after the entry of the order is in the amount specified in RCW 6.13.030(2) with respect to lands. In the order the court shall designate those assets of the claimants that are so exempt.

Sec. 613. RCW 11.54.090 and 1997 c 252 s 56 are each amended to read as follows:

The petition for an award, for an increased or modified award, or for the exemption of assets from the claims of creditors as authorized by this chapter must be made to the court of the county in which the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the ~~((decedent's estate could be administered under RCW 11.96.050 if the decedent held personal property subject to probate in the county of the decedent's domicile))~~ decedent was domiciled at the time of death. If the decedent was not domiciled in the state of Washington at the time of death, the petition may be made to the court of any county in which the decedent's estate could be administered under section 202 of this act. The petition and the hearing must conform to ~~((RCW 11.96.070))~~ sections 301 through 313 of this act. Notice of the hearing on the petition must be given in accordance with ~~((RCW 11.96.100))~~ section 304 of this act.

Sec. 614. RCW 11.68.065 and 1997 c 252 s 64 are each amended to read as follows:

A beneficiary whose interest in an estate has not been fully paid or distributed may petition the court for an order directing the personal representative to deliver a report of the affairs of the estate signed and verified by the personal representative. The petition may be filed at any time after one year from the day on which the report was last delivered, or, if none, then one year after the order appointing the personal representative. Upon hearing of the petition after due notice as required in ~~((chapter 11.96 RCW))~~ section 304 of this act, the court may, for good cause shown, order the personal representative to deliver to the petitioner the report for any period not covered by a previous report. The report for the period shall include such of the following as the court may order: A description of the amount and nature of all property, real and personal, that has come into the hands of the personal representative; a statement of all property collected and paid out or distributed by the personal representative; a statement of claims filed and allowed against the estate and those rejected; any estate, inheritance, or fiduciary income tax returns filed by the personal representative; and such other information as the order may require. This subsection does not limit any power the court might otherwise have at any time during the administration of the estate to require the

personal representative to account or furnish other information to any person interested in the estate.

Sec. 615. RCW 11.68.080 and 1997 c 252 s 65 are each amended to read as follows:

(1) Within ten days after the personal representative has received from alleged creditors under chapter 11.40 RCW claims that have an aggregate face value that, when added to the other debts and to the taxes and expenses of greater priority under applicable law, would appear to cause the estate to be insolvent, the personal representative shall notify in writing all beneficiaries under the decedent's will and, if any of the decedent's property will pass according to the laws of intestate succession, all heirs, together with any unpaid creditors, other than a creditor whose claim is then barred under chapter 11.40 RCW or the otherwise applicable statute of limitations, that the estate might be insolvent. The personal representative shall file a copy of the written notice with the court.

(2) Within ten days after an estate becomes insolvent, the personal representative shall petition under (~~chapter 11.96 RCW~~) section 301 of this act for a determination of whether the court should reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers. Notice of the hearing must be given in accordance with (~~RCW 11.96.100 and 11.96.110~~) section 304 of this act.

(3) If, upon a petition under (~~chapter 11.96 RCW~~) section 301 of this act of any personal representative, beneficiary under the decedent's will, heir if any of the decedent's property passes according to the laws of intestate succession, or any unpaid creditor with a claim that has been accepted or judicially determined to be enforceable, the court determines that the decedent's estate is insolvent, the court shall reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers to the extent necessary to protect the best interests of the beneficiaries and creditors of the estate.

(4) If the court rescinds or restricts a prior grant of nonintervention powers, the court shall endorse the term "powers rescinded" or "powers restricted" upon the prior order together with the date of the endorsement.

Sec. 616. RCW 11.92.140 and 1991 c 193 s 32 are each amended to read as follows:

The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter (~~11.96~~) 11.92 RCW (sections 101 through 507 of this act), may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such

charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a minor under chapter ((41.93)) 11.114 RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

Sec. 617. RCW 11.95.140 and 1997 c 252 s 74 are each amended to read as follows:

(1)(a) RCW 11.95.100 and 11.95.110 respectively apply to a power of appointment created:

(i) Under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed after July 25, 1993, unless the terms of the instrument refer specifically to RCW 11.95.100 or 11.95.110 respectively and provide expressly to the contrary; or

(ii) Under a testamentary trust, trust agreement, or declaration of trust executed before July 25, 1993, unless:

(A) The trust is revoked, or amended to provide otherwise, and the terms of any amendment specifically refer to RCW 11.95.100 or 11.95.110, respectively, and provide expressly to the contrary;

(B) All parties in interest, as defined in RCW 11.98.240(3), elect affirmatively, in the manner prescribed in RCW 11.98.240(4), not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under ~~((RCW 11.96.070))~~ section 301 of this act obtains a judicial determination ~~((under chapter 11.96 RCW,))~~ that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, for the purposes of this section a codicil to a will, an amendment to a trust, or an amendment to another instrument that created the power of appointment in question shall not be deemed to cause that instrument to be executed after July 25, 1993, unless the codicil or amendment clearly shows an intent to have RCW 11.95.100 or 11.95.110 apply.

(2) Notwithstanding subsection (1) of this section, RCW 11.95.100 through 11.95.150 shall apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed prior to July 25, 1993, if the person who created the power of appointment had on July 25, 1993, the power to revoke, amend, or modify the instrument creating the power of appointment, unless:

(a) The terms of the instrument specifically refer to RCW 11.95.100 or 11.95.110 respectively and provide expressly to the contrary; or

(b) The person creating the power of appointment was not competent, on July 25, 1993, to revoke, amend, or modify the instrument creating the power of appointment and did not regain his or her competence to revoke, amend, or modify the instrument creating the power of appointment on or before his or her death or before the time at which the instrument could no longer be revoked, amended, or modified by the person.

Sec. 618. RCW 11.98.039 and 1985 c 30 s 44 are each amended to read as follows:

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor

trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to all adult income beneficiaries of the trust and to all known and identifiable adults for whom the income of the trust is being accumulated. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW ~~((11.98.040))~~ 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, the beneficiaries and the then-acting trustee, if any, of a trust may agree ~~((for the))~~ to a nonjudicial change of the trustee under ((RCW 11.96.170)) section 402 of this act. The trustee, or any beneficiary if there is no then-acting trustee, shall give written notice of the proposed change in trustee to every beneficiary or special representative, and to the trustor if alive. The notice shall: (a) State the name and mailing address of the trustee or the beneficiary giving the notice; (b) include a copy of the governing instrument; (c) state the name and mailing address of the successor trustee; and (d) include a copy of the proposed successor trustee's agreement to serve as trustee. The notice shall advise the recipient of the right to petition for a judicial appointment or change in trustee as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed change in trustee may be indicated. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) Any beneficiary of a trust, the trustor if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee under the procedures provided in ~~((chapter 11.96 RCW))~~ sections 301 through 313 of this act: (a) Whenever the office of trustee becomes vacant((?)); (b) upon filing of a petition of resignation by a trustee((?)); (c) upon the giving of notice of the change in trustee as referred to in subsection (1) or (2) of this section((?)); or (d) for any other reasonable cause.

(4) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to

accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

Sec. 619. RCW 11.98.051 and 1985 c 30 s 46 are each amended to read as follows:

(1) The trustee may transfer trust assets or the place of administration in accordance with (~~RCW 11.96.170~~) section 402 of this act. In addition, the trustee shall give written notice to those persons entitled to notice as provided for under (~~RCW 11.96.100 and 11.96.110~~) section 304 of this act and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW. The notice shall:

- (a) State the name and mailing address of the trustee;
- (b) Include a copy of the governing instrument of the trust;
- (c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;
- (d) State the name and mailing address of the trustee to whom the assets or administration will be transferred together with evidence that the trustee has agreed to accept the assets or trust administration in the manner provided by law of the new place of administration. The notice shall also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;
- (e) State the facts supporting the requirements of RCW 11.98.045(2);
- (f) Advise the beneficiaries of the right to petition for judicial determination of the proposed transfer as provided in RCW 11.98.055; and
- (g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the trustee receives written consent to the proposed transfer from all persons entitled to notice, the trustee may transfer the trust assets or place of administration as provided in the notice. Transfer in accordance with the notice is a full discharge of the trustee's duties in relation to all property referred to therein. Any person dealing with the trustee is entitled to rely on the authority of the trustee to act and is not obliged to inquire into the validity or propriety of the transfer.

Sec. 620. RCW 11.98.055 and 1985 c 30 s 47 are each amended to read as follows:

(1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of trust assets or transfer of the place of administration in accordance with ~~((chapter 11.96 RCW))~~ sections 301 through 313 of this act.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of trust assets or the place of trust administration on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

Sec. 621. RCW 11.98.080 and 1991 c 6 s 2 are each amended to read as follows:

(1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in ~~((RCW 11.96.170))~~ section 402 of this act.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in ~~((RCW 11.96.100 and 11.96.110))~~ section 304 of this act and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days

of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in ~~((RCW 11.96.100 and 11.96.110))~~ section 304 of this act or from their representatives, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under ~~((chapter 11.96 RCW))~~ sections 301 through 313 of this act. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created.

(5) For powers of fiduciaries to divide trusts, see RCW 11.108.025.

Sec. 622. RCW 11.98.110 and 1988 c 29 s 8 are each amended to read as follows:

As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, if the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a)

the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

(3) In any such action against the trustee in the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section.

(5) The procedure for all actions provided in this section is as provided in ~~(chapter 11.96 RCW)~~ sections 301 through 313 of this act.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee.

Sec. 623. RCW 11.98.170 and 1991 c 193 s 29 are each amended to read as follows:

(1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a

trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter ~~((4-96)) 11.~~ RCW (sections 101 through 507 of this act), unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter ~~((4-96)) 11.~~ RCW (sections 101 through 507 of this act).

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.114 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter 11.114 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement.

Sec. 624. RCW 11.98.200 and 1994 c 221 s 65 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, 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 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~~) section 301 of this act 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~~) section 402 of this act.

Sec. 625. RCW 11.98.220 and 1993 c 339 s 4 are each amended to read as follows:

RCW 11.98.200 through 11.98.240 do not raise any inference that the law of this state prior to July 25, 1993, was different than under RCW 11.98.200 through 11.98.240. Further, RCW 11.98.200 through 11.98.240 do not raise an inference that prior to July 25, 1993, a trustee's exercise or failure to exercise a power described in RCW 11.98.200 through 11.98.240 was not subject to review by a court of competent jurisdiction for abuse of discretion or breach of fiduciary duty under chapter (~~11-96~~) 11.— RCW (sections 101 through 507 of this act) or other applicable law. Following July 25, 1993, the power of judicial review continues to apply.

Sec. 626. RCW 11.98.240 and 1997 c 252 s 76 are each amended to read as follows:

(1)(a) RCW 11.98.200 and 11.98.210 respectively apply to:

(i) 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 221 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 January 1, 1995, unless the instrument's terms refer specifically to RCW 11.98.200 and provide expressly to the contrary.

(ii) A trust created under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed before July 25, 1993, unless:

(A) The trust is revoked or amended and the terms of the amendment refer specifically to RCW 11.98.200 and provide expressly to the contrary;

(B) All parties in interest, as defined in subsection (3) of this section elect affirmatively, in the manner prescribed in subsection (4) of this section, not to be subject to the application of this subsection. The election must be made by the later of September 1, 2000, or three years after the date on which the trust becomes irrevocable; or

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under (~~RCW 11.96.070~~) section 301 of this act obtains a judicial determination(~~(under chapter 11.96 RCW,)~~) that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(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.

(3) For the purpose of subsection (1)(a)(ii) of this section, "parties in interest" means those persons identified as "~~(required)~~ parties ~~(to the dispute)~~" under (~~RCW 11.96.170(6)(b)~~) section 104(4) of this act.

(4) The affirmative election required under subsection (1)(a)(ii)(B) of this section must be made in the following manner:

(a) If the trust is revoked or amended, through a revocation of or an amendment to the trust; or

(b) Through a nonjudicial dispute resolution agreement described in ((RCW 11.96.170)) section 402 of this act.

Sec. 627. RCW 11.106.040 and 1985 c 30 s 98 are each amended to read as follows:

~~((Upon the petition under chapter 11.96 RCW of any settlor or of any beneficiary of such a trust after due notice as provided in chapter 11.96 RCW to the trustee))~~ At any time after the later of one year from the inception of the trust or one year after the day on which a report was last filed, any settlor or beneficiary of a trust may file a petition under section 301 of this act with the superior court in the county where the trustee or one of the trustees resides ((may)) asking the court to direct the trustee or trustees to file in the court an account ((at any time after one year from the day on which such a report was last filed, or if none, then after one year from the inception of the trust)). At the hearing on such petition the court may order the trustee to file an account for good cause shown.

Sec. 628. RCW 11.106.050 and 1985 c 30 s 99 are each amended to read as follows:

When any account has been filed pursuant to RCW 11.106.030 or 11.106.040, the clerk of the court where filed shall fix a return day therefor as provided in ((RCW 11.96.090)) section 303(4) of this act and issue a notice. The notice shall state the time and place for the return date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under ((RCW 11.96.100 or 11.96.110)) section 304 of this act.

Sec. 629. RCW 11.106.060 and 1985 c 30 s 100 are each amended to read as follows:

Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall appoint guardians ad litem as provided in ((RCW 11.96.180)) section 309 of this act and the court may allow representatives to be appointed under ((RCW 11.96.110 and 11.96.170)) section 305 or 405 of this act to represent the persons listed in those sections.

Sec. 630. RCW 11.108.040 and 1985 c 30 s 109 are each amended to read as follows:

(1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of that testator's estate or a trust

estate expressed in terms of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall, unless subsection (2) or (3) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under ~~((the dispute resolution procedures in chapter 11.96 RCW))~~ section 402 of this act; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator, the expression shall not be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property, but only to the extent that such construction does not cause the amount or fractional share left to or for the benefit

of the surviving spouse to be reduced below the amount that would pass under subsection (2) or (3) of this section, whichever is applicable.

(5) This section is effective with respect to testators dying after December 31, 1982.

Sec. 631. RCW 11.108.900 and 1985 c 30 s 112 are each amended to read as follows:

This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter ~~((11.96))~~ 11.— RCW (sections 101 through 507 of this act) apply to this chapter.

Sec. 632. RCW 11.110.120 and 1985 c 30 s 125 are each amended to read as follows:

The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in ~~((RCW 11.96.100))~~ section 304 of this act, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it.

Sec. 633. RCW 11.114.020 and 1991 c 193 s 2 are each amended to read as follows:

(1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act

of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter under this chapter subject to court determination is governed by the procedures provided in (~~chapter 11.96 RCW~~) sections 301 through 313 of this act. However, no guardian ad litem is required for the minor, except under RCW 11.14.190(1), in the case of a petition by a unrepresented minor under the age of fourteen years.

Sec. 634. RCW 36.18.012 and 1996 c 211 s 1 are each amended to read as follows:

(1) Revenue collected under this section is subject to division with the state for deposit in the public safety and education account under RCW 36.18.025.

(2) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district court in the county of issuance, shall pay at the time of filing a fee of fifteen dollars.

(3) For the filing of a tax warrant by the department of revenue of the state of Washington, a fee of five dollars must be paid.

(4) The clerk shall collect a fee of twenty dollars for: Filing a paper not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law.

(5) If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff shall pay before proceeding with the unlawful detainer action eighty dollars.

(6) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

(7) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

(8) A fee of two dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under (~~RCW 11.96.170~~) section 402 of this act.

(9) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

(10) For certification of delinquent taxes by a county treasurer under RCW 84.64.190, a fee of five dollars must be charged.

Sec. 635. RCW 36.18.020 and 1996 c 211 s 2 are each amended to read as follows:

(1) Revenue collected under this section is subject to division with the state public safety and education account under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) The party filing the first or initial paper in any civil action, including, but not limited to an action for restitution, adoption, or change of name, shall pay, at the time the paper is filed, a fee of one hundred ten dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of thirty dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The thirty dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial paper on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the paper is filed, a fee of one hundred ten dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of one hundred ten dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of one hundred ten dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of one hundred ten dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first paper therein, a fee of one hundred ten dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in (~~RCW 11.96.170~~) section 402 of this act, there shall be paid a fee of one hundred ten dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of one hundred ten dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972: PROVIDED, That no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

Sec. 636. RCW 83.100.180 and 1988 c 64 s 17 are each amended to read as follows:

At any time prior to the making of an order under RCW 83.100.170, any person having an interest in property subject to the tax may file objections in

writing with the clerk of the superior court and serve a copy thereof upon the department, and the same shall be noted for trial before the court and a hearing had thereon as provided for hearings in (~~chapter 11.96 RCW~~) sections 301 through 313 of this act.

NEW SECTION. **Sec. 637.** The following acts or parts of acts are each repealed:

- (1) RCW 11.16.060 and 1965 c 145 s 11.16.060;
- (2) RCW 11.16.070 and 1965 c 145 s 11.16.070;
- (3) RCW 11.16.082 and 1965 c 145 s 11.16.082;
- (4) RCW 11.16.083 and 1996 c 249 s 7, 1977 ex.s. c 234 s 1, & 1965 c 145 s 11.16.083;
- (5) RCW 11.96.009 and 1994 c 221 s 51 & 1985 c 31 s 2;
- (6) RCW 11.96.020 and 1994 c 221 s 52 & 1985 c 31 s 3;
- (7) RCW 11.96.030 and 1985 c 31 s 4;
- (8) RCW 11.96.040 and 1985 c 31 s 5;
- (9) RCW 11.96.050 and 1994 c 221 s 53 & 1985 c 31 s 6;
- (10) RCW 11.96.060 and 1994 c 221 s 54 & 1985 c 31 s 7;
- (11) RCW 11.96.070 and 1997 c 252 s 77, 1994 c 221 s 55, 1990 c 179 s 1, 1988 c 29 s 6, & 1985 c 31 s 8;
- (12) RCW 11.96.080 and 1994 c 221 s 56 & 1985 c 31 s 9;
- (13) RCW 11.96.090 and 1994 c 221 s 57 & 1985 c 31 s 10;
- (14) RCW 11.96.100 and 1994 c 221 s 58 & 1985 c 31 s 11;
- (15) RCW 11.96.110 and 1994 c 221 s 59 & 1985 c 31 s 12;
- (16) RCW 11.96.120 and 1985 c 31 s 13;
- (17) RCW 11.96.130 and 1994 c 221 s 60 & 1985 c 31 s 14;
- (18) RCW 11.96.140 and 1994 c 221 s 61 & 1985 c 31 s 15;
- (19) RCW 11.96.150 and 1985 c 31 s 16;
- (20) RCW 11.96.160 and 1994 c 221 s 62, 1988 c 202 s 19, & 1985 c 31 s 17;
- (21) RCW 11.96.170 and 1994 c 221 s 63, 1988 c 29 s 7, & 1985 c 31 s 18;
- (22) RCW 11.96.180 and 1994 c 221 s 64 & 1985 c 31 s 19;
- (23) RCW 11.96.900 and 1985 c 31 s 1; and
- (24) RCW 11.96.901 and 1985 c 31 s 20.

PART VII

MISCELLANEOUS—EFFECTIVE DATES

NEW SECTION. **Sec. 701.** Part headings and captions used in this act are not any part of the law.

NEW SECTION. **Sec. 702.** Sections 101 through 507 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. **Sec. 703.** This act takes effect January 1, 2000.

NEW SECTION. **Sec. 704.** Section 405 of this act is remedial in nature and applies to all actions taken by special representatives from January 1, 1985, and thereafter.

Passed the Senate March 4, 1999.
 Passed the House April 7, 1999.
 Approved by the Governor April 20, 1999.
 Filed in Office of Secretary of State April 20, 1999.

CHAPTER 43

[Substitute Senate Bill 5197]
DISCLAIMER OF INTERESTS

AN ACT Relating to disclaimer of interests; amending RCW 11.86.041; and creating a new section.

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

Sec. 1. RCW 11.86.041 and 1997 c 252 s 73 are each amended to read as follows:

(1) Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) ~~((Unless the beneficiary is the surviving spouse of a deceased creator of the interest, the beneficiary shall also be deemed to have disclaimed all interests in the property, including all beneficial interests in any trust into which the disclaimed property may pass. This subsection applies unless the disclaimer specifically refers to this subsection and states to the contrary.))~~ Unless the beneficiary provides otherwise in the disclaimer, in addition to the interests disclaimed, the beneficiary shall also be deemed to have disclaimed the minimum of all interests in the disclaimed property necessary to make the disclaimer a qualified disclaimer for purposes of section 2518 of the Internal Revenue Code.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) Unless the instrument creating the interest directs to the contrary, a beneficiary whose interest in a devise or bequest under a will has been disclaimed shall be deemed to have died for purposes of RCW 11.12.110.

(6) ~~((In the case of a disclaimer that results in property passing to a trust over which the disclaimant has any power to direct the beneficial enjoyment of the disclaimed property, the disclaimant shall also be deemed to have disclaimed any power to direct the beneficial enjoyment of the disclaimed property, unless the power is limited by an ascertainable standard for the health, education, support, or maintenance of any person as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under those sections. This~~

~~subsection applies unless the disclaimer specifically refers to this subsection and states to the contrary. This subsection shall not be deemed to otherwise prevent such a disclaimant from acting as trustee or executor over disclaimed property.))~~
In the case of a disclaimer of property over which the disclaimant has any power to direct the beneficial enjoyment of the disclaimed property, the disclaimant shall also be deemed to have disclaimed any power to direct the beneficial enjoyment of the disclaimed property, unless the power is limited by an ascertainable standard relating to the health, education, support, or maintenance of any person as described in section 2041 or 2514 of the Internal Revenue Code and applicable regulations adopted under those sections. This subsection applies unless the disclaimer specifically provides otherwise. This subsection shall not be deemed to otherwise prevent such a disclaimant from acting as trustee or personal representative over disclaimed property.

NEW SECTION. Sec. 2. This act applies retroactively to all disclaimers made after December 31, 1997.

Passed the Senate March 9, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 44

[Senate Bill 5198]

PROBATE AND TRUST LAW—CLARIFYING LANGUAGE TO COMPORT WITH THE INTERNAL REVENUE CODE

AN ACT Relating to updating the probate and trust law to comport with Internal Revenue Code language; and amending RCW 11.108.060.

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

Sec. 1. RCW 11.108.060 and 1997 c 252 s 86 are each amended to read as follows:

For an estate that exceeds the amount exempt from tax by virtue of the ~~((unified))~~ credit under section 2010 of the Internal Revenue Code, if taking into account applicable adjusted taxable gifts as defined in section 2001(b) of the Internal Revenue Code, any marital deduction gift that is conditioned upon the transferor's spouse surviving the transferor for a period of more than six months, is governed by the following:

(1) A survivorship requirement expressed in the governing instrument in excess of six months, other than survival by a spouse of a common disaster resulting in the death of the transferor, does not apply to property passing under the marital deduction gift, and for the gift, the survivorship requirement is limited to a six-month period beginning with the transferor's death.

(2) The property that is the subject of the marital deduction gift must be held in a trust meeting the requirements of section 2056(b)(7) of the Internal Revenue

Code the corpus of which must: (a) Pass as though the spouse failed to survive the transferor if the spouse, in fact, fails to survive the term specified in the governing instrument; and (b) pass to the spouse under the terms of the governing instrument if the spouse, in fact, survives the term specified in the governing instrument.

Passed the Senate March 9, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 45

[Substitute Senate Bill 5234]

CUSTODIAL SEXUAL MISCONDUCT

AN ACT Relating to custodial sexual misconduct; amending RCW 43.43.830 and 70.125.030; reenacting and amending RCW 9A.44.320; adding new sections to chapter 9A.44 RCW; adding a new section to chapter 72.09 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) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a class C felony.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.44 RCW to read as follows:

(1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator

has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the second degree is a gross misdemeanor.

NEW SECTION. Sec. 3. A new section is added to chapter 9A.44 RCW to read as follows:

It is an affirmative defense to prosecution under section 1 or 2 of this act, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

Sec. 4. RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c 82 s 1, and 1998 c 78 s 1 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) Malicious explosion 1 (RCW 70.74.280(1))
XIII	Murder 2 (RCW 9A.32.050) Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
XI	Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Manslaughter 1 (RCW 9A.32.060)
X	Kidnapping 1 (RCW 9A.40.020) Child Molestation 1 (RCW 9A.44.083) Malicious explosion 3 (RCW 70.74.280(3)) Over 18 and deliver heroin, a narcotic from Schedule I or II, or flunitrazepam from

- Schedule IV to someone under 18 (RCW 69.50.406)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
- IX Assault of a Child 2 (RCW 9A.36.130)
- Robbery 1 (RCW 9A.56.200)
- Explosive devices prohibited (RCW 70.74.180)
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Controlled Substance Homicide (RCW 69.50.415)
- Sexual Exploitation (RCW 9.68A.040)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 88.12.029)
- 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))
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))

- Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 88.12.029)
- Manslaughter 2 (RCW 9A.32.070)
- VII Burglary 1 (RCW 9A.52.020)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- Homicide by Watercraft, by disregard for the safety of others (RCW 88.12.029)
- 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))
- Drive-by Shooting (RCW 9A.36.045)
- Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1)(a))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- VI Bribery (RCW 9A.68.010)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Incest I (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II

- (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW 9.94.070)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Abandonment of dependent person 1 (RCW 9A.42.060)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Custodial Sexual Misconduct 1 (RCW 9A.44.— (section 1 of this act))
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- IV Residential Burglary (RCW 9A.52.025)
- Theft of Livestock 1 (RCW 9A.56.080)
- Robbery 2 (RCW 9A.56.210)
- Assault 2 (RCW 9A.36.021)

- Escape 1 (RCW 9A.76.110)
 - Arson 2 (RCW 9A.48.030)
 - Commercial Bribery (RCW 9A.68.060)
 - Bribing a Witness/Bribe Received by Witness
(RCW 9A.72.090, 9A.72.100)
 - Malicious Harassment (RCW 9A.36.080)
 - Threats to Bomb (RCW 9.61.160)
 - Willful Failure to Return from Furlough (RCW
72.66.060)
 - Hit and Run—Injury Accident (RCW
46.52.020(4))
 - Hit and Run with Vessel—Injury Accident
(RCW 88.12.155(3))
 - Vehicular Assault (RCW 46.61.522)
 - Assault by Watercraft (RCW 88.12.032)
 - Manufacture, deliver, or possess with intent to
deliver narcotics from Schedule III, IV, or
V or nonnarcotics from Schedule I-V
(except marijuana, amphetamine,
methamphetamines, or flunitrazepam)
(RCW 69.50.401(a)(1) (iii) through (v))
 - 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 Gang Intimidation (RCW 9A.46.120)
 - Criminal Mistreatment 2 (RCW 9A.42.030)
 - Abandonment of dependent person 2 (RCW
9A.42.070)
 - Extortion 2 (RCW 9A.56.130)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Assault 3 (RCW 9A.36.031)
 - Assault of a Child 3 (RCW 9A.36.140)
 - Custodial Assault (RCW 9A.36.100)
 - Unlawful possession of firearm in the second
degree (RCW 9.41.040(1)(b))
 - Harassment (RCW 9A.46.020)
 - Promoting Prostitution 2 (RCW 9A.88.080)
 - Willful Failure to Return from Work Release
(RCW 72.65.070)
 - Burglary 2 (RCW 9A.52.030)

Introducing Contraband 2 (RCW 9A.76.150)
 Communication with a Minor for Immoral
 Purposes (RCW 9.68A.090)
 Patronizing a Juvenile Prostitute (RCW
 9.68A.100)
 Escape 2 (RCW 9A.76.120)
 Perjury 2 (RCW 9A.72.030)
 Bail Jumping with class B or C Felony (RCW
 9A.76.170(2)(c))
 Intimidating a Public Servant (RCW
 9A.76.180)
 Tampering with a Witness (RCW 9A.72.120)
 Manufacture, deliver, or possess with intent to
 deliver marijuana (RCW
 69.50.401(a)(1)(iii))
 Delivery of a material in lieu of a controlled
 substance (RCW 69.50.401(c))
 Manufacture, distribute, or possess with intent
 to distribute an imitation controlled
 substance (RCW 69.52.030(1))
 Recklessly Trafficking in Stolen Property
 (RCW 9A.82.050(1))
 Theft of livestock 2 (RCW 9A.56.080)
 Securities Act violation (RCW 21.20.400)

II Unlawful Practice of Law (RCW 2.48.180)
 Malicious Mischief 1 (RCW 9A.48.070)
 Possession of Stolen Property 1 (RCW
 9A.56.150)
 Theft 1 (RCW 9A.56.030)
 Class B Felony Theft of Rental, Leased, or
 Lease-purchased Property (RCW
 9A.56.096(4))
 Trafficking in Insurance Claims (RCW
 48.30A.015)
 Unlicensed Practice of a Profession or Business
 (RCW 18.130.190(7))
 Health Care False Claims (RCW 48.80.030)
 Possession of controlled substance that is either
 heroin or narcotics from Schedule I or II
 or flunitrazepam from Schedule IV (RCW
 69.50.401(d))
 Possession of phencyclidine (PCP) (RCW
 69.50.401(d))

Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
 Computer Trespass 1 (RCW 9A.52.110)
 Escape from Community Custody (RCW 72.09.310)

- I Theft 2 (RCW 9A.56.040)
 Class C Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
 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 or flunitrazepam) (RCW 69.50.401(d))

Sec. 5. RCW 43.43.830 and 1998 c 10 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial

interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "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.

(8) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(9) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(10) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

Sec. 6. RCW 70.125.030 and 1996 c 123 s 6 are each amended to read as follows:

As used in this chapter and unless the context indicates otherwise:

(1) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, and system coordination.

(2) "Department" means the department of community, trade, and economic development.

(3) "Law enforcement agencies" means police and sheriff's departments of this state.

(4) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(5) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(6) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

~~((g))~~ (h) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, specialized sexual assault medical examination, and prevention education to potential victims of sexual assault.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault.

NEW SECTION. **Sec. 7.** A new section is added to chapter 72.09 RCW to read as follows:

The department shall investigate any alleged violations of section 1 or 2 of this act that are alleged to have been committed by an employee or contract personnel of the department, to determine whether there is probable cause to believe that the allegation is true before reporting the alleged violation to a prosecuting attorney.

Passed the Senate March 4, 1999.
Passed the House April 7, 1999.
Approved by the Governor April 20, 1999.
Filed in Office of Secretary of State April 20, 1999.

CHAPTER 46

[Senate Bill 5253]

REAL ESTATE BROKERS OR SALESPERSONS—GROUNDS FOR DISCIPLINARY ACTION

AN ACT Relating to grounds for disciplinary action against real estate brokers or salespersons; and amending RCW 18.85.230.

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

Sec. 1. RCW 18.85.230 and 1997 c 322 s 17 are each amended to read as follows:

The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions: Suspend or revoke, levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license of any holder or applicant who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or RCW 18.86.030 or the rules adopted under those chapters or section;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

(17) Misrepresentation of his or her membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

(23) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

(24) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(27) Acting as a vehicle dealer, as defined in RCW 46.70.011, without having a license to do so;

(28) Failing to assure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson; or

(29) Violation of an order to cease and desist which is issued by the director under this chapter.

Passed the Senate March 9, 1999.
 Passed the House April 7, 1999.
 Approved by the Governor April 20, 1999.
 Filed in Office of Secretary of State April 20, 1999.

CHAPTER 47

[Senate Bill 5347]

FRUIT AND VEGETABLE DISTRICT FUND

AN ACT Relating to the fruit and vegetable district fund; amending RCW 15.17.243; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 15.17.243 and 1997 c 227 s 1 are each amended to read as follows:

The ~~((inspector-at-large))~~ district manager for district two as defined in WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the ~~((horticultural))~~ fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of funds shall occur by June 1, 1997. On June 30, ~~((1999))~~ 2001, any unexpended portion of the two hundred thousand dollars shall be returned to the ~~((horticultural))~~ fruit and vegetable district fund.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 1999.

Passed the Senate March 4, 1999.
 Passed the House April 7, 1999.
 Approved by the Governor April 20, 1999.
 Filed in Office of Secretary of State April 20, 1999.

CHAPTER 48

[Senate Bill 5442]

REAL ESTATE BROKERS—CLIENT FUNDS IN ESCROW ACCOUNTS

AN ACT Relating to real estate broker's records; and amending RCW 18.85.310.

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

Sec. 1. RCW 18.85.310 and 1995 c 399 s 7 are each amended to read as follows:

(1) Every licensed real estate broker shall keep adequate records of all real estate transactions handled by or through the broker. The records shall include, but are not limited to, a copy of the earnest money receipt, and an itemization of the broker's receipts and disbursements with each transaction. These records and all

other records hereinafter specified shall be open to inspection by the director or the director's authorized representatives.

(2) Every real estate broker shall also deliver or cause to be delivered to all parties signing the same, at the time of signing, conformed copies of all earnest money receipts, listing agreements and all other like or similar instruments signed by the parties, including the closing statement.

(3) Every real estate broker shall also keep separate real estate fund accounts in a recognized Washington state depository authorized to receive funds in which shall be kept separate and apart and physically segregated from licensee broker's own funds, all funds or moneys of clients which are being held by such licensee broker pending the closing of a real estate sale or transaction, or which have been collected for said client and are being held for disbursement for or to said client and such funds shall be deposited not later than the first banking day following receipt thereof.

(4) Separate accounts comprised of clients' funds required to be maintained under this section, with the exception of property management trust accounts, shall be interest-bearing accounts from which withdrawals or transfers can be made without delay, subject only to the notice period which the depository institution is required to reserve by law or regulation.

(5) Every real estate broker shall maintain a pooled interest-bearing escrow account for deposit of client funds, with the exception of property management trust accounts, which are nominal. As used in this section, a "nominal" deposit is a deposit of not more than ~~((five))~~ ten thousand dollars.

The interest accruing on this account, net of any reasonable and appropriate financial institution service charges or fees, shall be paid to the state treasurer for deposit in the Washington housing trust fund created in RCW 43.185.030 and the real estate education account created in RCW 18.85.317. Appropriate service charges or fees are those charges made by financial institutions on other demand deposit or "now" accounts. An agent may, but shall not be required to, notify the client of the intended use of such funds.

(6) All client funds not required to be deposited in the account specified in subsection (5) of this section shall be deposited in:

(a) A separate interest-bearing trust account for the particular client or client's matter on which the interest will be paid to the client; or

(b) The pooled interest-bearing trust account specified in subsection (5) of this section if the parties to the transaction agree.

The department of licensing shall promulgate regulations which will serve as guidelines in the choice of an account specified in subsection (5) of this section or an account specified in this subsection.

(7) For an account created under subsection (5) of this section, an agent shall direct the depository institution to:

(a) Remit interest or dividends, net of any reasonable and appropriate service charges or fees, on the average monthly balance in the account, or as otherwise

computed in accordance with an institution's standard accounting practice, at least quarterly, to the state treasurer for deposit in the housing trust fund created by RCW 43.185.030 and the real estate education account created in RCW 18.85.317; and

(b) Transmit to the director of community, trade, and economic development a statement showing the name of the person or entity for whom the remittance is spent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing person or firm.

(8) The director shall forward a copy of the reports required by subsection (7) of this section to the department of licensing to aid in the enforcement of the requirements of this section consistent with the normal enforcement and auditing practices of the department of licensing.

(9) This section does not relieve any real estate broker from any obligation with respect to the safekeeping of clients' funds.

(10) Any violation by a real estate broker of any of the provisions of this section, or RCW 18.85.230, shall be grounds for revocation of the licenses issued to the broker.

Passed the Senate March 13, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 49

[Substitute Senate Bill 5573]

CRIMINAL HISTORY RECORDS

AN ACT Relating to criminal history records; and amending RCW 10.97.030 and 10.98.050.

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

Sec. 1. RCW 10.97.030 and 1998 c 297 s 49 are each amended to read as follows:

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of

involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges other than: (a) A decision not to prosecute; (b) a dismissal; or (c) acquittal; with the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal due to a finding of not guilty by reason of insanity and a dismissal by reason of incompetency, pursuant to chapter 10.77 RCW; and a dismissal entered after a period of probation, suspension, or deferral of sentence.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination.

Sec. 2. RCW 10.98.050 and 1989 c 6 s 1 are each amended to read as follows:

(1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney, county clerk, or appropriate court of limited jurisdiction, whichever is responsible for transmitting the report to the section under RCW 10.98.010.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections, or, in the case of a juvenile, the juvenile court administrator to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney.

Passed the Senate March 12, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 50

[Substitute Senate Bill 5609]

STATE EMPLOYEE'S SUGGESTION AWARDS AND INCENTIVE PAY

AN ACT Relating to state employees' suggestion awards and incentive pay; and amending RCW 41.60.010, 41.60.015, 41.60.020, 41.60.030, 41.60.041, 41.60.080, 41.60.100, 41.60.110, 41.60.120, and 41.60.150.

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

Sec. 1. RCW 41.60.010 and 1993 c 467 s 1 are each amended to read as follows:

As used in this chapter:

- (1) "Board" means the productivity board.
- (2) "Delegated authority" means authority delegated to an agency head by the board to design and implement an agency unique employee suggestion program for the agency.
- (3) "Board designee" means an agency head with delegated authority from the board.
- (4) "Employee suggestion program" means the programs developed by the board under RCW 41.60.020.
- ~~((3))~~ (5) "State-wide employee suggestion program" means an employee suggestion program administered by the productivity board.
- (6) "Agency unique suggestion program" means an employee suggestion program designed and administered by an agency head with delegated authority.
- (7) "Teamwork incentive program" means the program developed by the board under RCW 41.60.100 through 41.60.120.
- ~~((4))~~ (8) "State employees" means present employees in state agencies and institutions of higher education except for elected officials, directors of such agencies and institutions, and their confidential secretaries and administrative assistants and others specifically ruled ineligible by the rules of the productivity board.

Sec. 2. RCW 41.60.015 and 1993 c 467 s 2 are each amended to read as follows:

- (1) There is hereby created the productivity board. The board shall administer the employee suggestion program and the teamwork incentive program under this chapter.
- (2) The board shall be composed of:
 - (a) The secretary of state who shall act as chairperson;
 - (b) The director of personnel appointed under the provisions of RCW 41.06.130 or the director's designee;
 - (c) The director of financial management or the director's designee;
 - (d) ~~((The personnel director appointed under the provisions of RCW 28B.16.060 or the director's designee;~~
 - ~~(e))~~ The director of general administration or the director's designee;

~~((f))~~ (e) Three persons with experience in administering incentives such as those used by industry, with the governor, lieutenant governor, and speaker of the house of representatives each appointing one person. The governor's appointee shall be a representative of an employee organization certified as an exclusive representative of at least one bargaining unit of classified employees, but no one organization may be represented for two consecutive terms;

~~((g))~~ (f) One person representing state agencies and institutions with employees subject to chapter 41.06 RCW ~~(, and one person representing those subject to chapter 28B.16 RCW, both to be)~~ appointed by the governor; and

~~((h))~~ (g) In addition, the governor and board chairperson may jointly appoint persons to the board on an ad hoc basis. Ad hoc members shall serve in an advisory capacity and shall not have the right to vote.

Members under subsection (2) ~~((f))~~ (e) and ~~((g))~~ (f) of this section shall be appointed to serve three-year terms.

Members of the board appointed pursuant to subsection (2)(f) of this section may be compensated in accordance with RCW 43.03.240. Any board member who is not a state employee may be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

Sec. 3. RCW 41.60.020 and 1995 c 181 s 1 are each amended to read as follows:

(1) The board shall formulate, establish, and maintain ~~((a))~~ a state-wide employee suggestion program and adopt rules to allow for agency unique suggestion programs. Employee suggestion programs are developed to encourage and reward meritorious suggestions by state employees that will promote efficiency and economy in the performance of any function of state government: PROVIDED, That the program shall include provisions for the processing of suggestions having multi-agency impact and post-implementation auditing of suggestions for fiscal accountability.

(2) ~~((The board shall prepare a topical list of all the productivity awards granted and disseminate this information to all the state government agencies that may be able to adapt them to their procedures.~~

~~—(3))~~ The board shall adopt rules ~~((and regulations))~~ necessary or appropriate for the proper administration and for the accomplishment of the purposes of this chapter. These rules shall include the adoption of a payment award schedule that establishes the criteria for determining the amounts of any financial or other awards under this chapter.

Sec. 4. RCW 41.60.030 and 1982 c 167 s 8 are each amended to read as follows:

The board, or board's designee, shall make the final determination as to whether an employee suggestion award will be made and shall determine the nature and extent of the award based on the payment award scale.

No employee suggestion award may normally be made to an employee for a suggestion which is within the scope of the employee's regularly assigned responsibilities.

Sec. 5. RCW 41.60.041 and 1989 c 56 s 1 are each amended to read as follows:

(1) Cash awards for suggestions generating net savings, revenue, or both to the state shall be ~~((ten percent of the net savings;~~

~~—(2) No award may be granted in excess of ten thousand dollars.~~

~~—(3) If the suggestion is significantly modified when implemented, the percentage specified in subsection (1) of this section may be decreased at the option of the board.~~

~~—(4)) determined by the board, or the board's designee, based on the payment award scale. No award may be granted in excess of ten thousand dollars. Savings, revenue, or both, shall be calculated for the first year of implementation.~~

(2) The board shall establish guidelines for making cash awards for suggestions for which benefits to the state are intangible or for which benefits cannot be calculated.

~~((5))~~ (3) Funds for the awards shall be drawn from the appropriation of the agency benefiting from the employee's suggestion. If the suggestion reduces costs to a nonappropriated fund or reduces costs paid without appropriation from a nonappropriated portion of an appropriated fund, an award may be paid from the benefiting fund or account without appropriation.

~~((6))~~ (4) Awards may be paid to state employees for suggestions which generate new or additional money for the general fund or any other funds of the state. The director of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund, in amounts equal to award payments made by the general fund, for suggestions generating new or additional money for those other funds.

Sec. 6. RCW 41.60.080 and 1982 c 167 s 12 are each amended to read as follows:

The ~~((chairman of the))~~ board and agency heads may design and initiate contests between agencies and between agency suggestion evaluators to encourage participation in the suggestion program at management levels. Any tokens of recognition offered during these contests shall be nonmonetary and shall not be considered an award, or subject to RCW 41.60.030.

Sec. 7. RCW 41.60.100 and 1993 c 467 s 4 are each amended to read as follows:

(1) With the exception of agencies of the legislative and judicial branches, any organizational unit composed of employees in any agency or group of agencies of state government with the ability to identify costs, revenues, or both may apply to the board to participate in the teamwork incentive program as a team. The

application shall have the approval of the heads of the agency or agencies within which the ~~((unit))~~ team is located.

(2) Applications shall be in the form specified by the board and contain such information as the board requires. This may include, but is not limited to, quantitative measures which establish a data base of program output or performance expectations, or both. This data base is used to evaluate savings in accordance with RCW 41.60.110~~((+))~~.

~~((The board shall evaluate the applications submitted. From those proposals which are considered to be reasonable and practical and which are found to include developed performance indicators which lend themselves to a judgment of success or failure, the board shall select the units to participate in the teamwork incentive program.))~~

Sec. 8. RCW 41.60.110 and 1993 c 467 s 5 are each amended to read as follows:

~~((+))~~ To qualify for a teamwork incentive program award for its employees, a ~~((unit selected shall demonstrate to the satisfaction of the board that it has operated during the period of participation at a lower cost or with an increase in revenue with no decrease in the level of services rendered:~~

~~— (a) A unit completing its period of participation shall compare costs or revenues during that period of participation to (i) the expenditures or revenues for a comparable span of time immediately preceding the first period of participation; or (ii) an average derived from the unit's historical data, or (iii) engineered standards used in conjunction with an average derived from the unit's historical data, or (iv) anticipated revenue as based on statistical projections or historical data;~~

~~— (b) A unit participating in the teamwork incentive program for two or more consecutive times may choose to compare its costs during the current period of participation with (i) its costs or revenues for the immediately preceding period, or (ii) an average of its costs or revenues for the preceding two or three comparable spans of time in the teamwork incentive program;~~

~~— (c) For the purposes of (a) of this subsection, a unit's historical data shall be restricted to data generated during the period of three years or less immediately preceding the unit's first participation in the teamwork incentive program; and~~

~~— (d) For the purposes of (b) of this subsection, a unit's costs or revenues for preceding periods of time may include the costs or revenues calculated under (a) (i), (ii), or (iii) of this subsection for the periods of time the unit participated in the teamwork incentive program.~~

~~(2) The board shall satisfy itself from documentation submitted by the organizational unit that the claimed cost of operation or level of higher revenue is real and not merely apparent and that it is not, in whole or in part, the result of:~~

~~— (a) Chance;~~

~~— (b) A lowering of the quality of the service rendered;~~

~~—(c) Nonrecurrence of expenditures which were single outlay, or one-time expenditures, in the preceding comparable period of time;~~
~~—(d) Stockpiling inventories in the immediately preceding period so as to reduce requirements in the eligible time period;~~
~~—(e) Substitution of federal funds, other receipts, or nonstate funds for programs currently receiving state appropriations;~~
~~—(f) Unreasonable postponement of payments of accounts payable until the period immediately following the eligible period of participation;~~
~~—(g) Shifting of expenses to another unit of government; or~~
~~—(h) Any other practice, event, or device which the board decides has caused a distortion which makes it falsely appear that a savings or increase in revenue gains or an increase in level of services has occurred.~~
~~—(3) The board shall consider as legitimate efficiencies those reductions in expenditures or increases in revenue made possible by such items as the following:~~
~~—(a) Reductions in overtime;~~
~~—(b) Elimination of consultant fees;~~
~~—(c) Less temporary help;~~
~~—(d) Improved systems and procedures;~~
~~—(e) Better deployment and utilization of personnel;~~
~~—(f) Elimination of unnecessary travel;~~
~~—(g) Elimination of unnecessary printing and mailing;~~
~~—(h) Elimination of unnecessary payments for items such as advertising;~~
~~—(i) Elimination of waste, duplication, and operations of doubtful value;~~
~~—(j) Improved space utilization;~~
~~—(k) Improved methods of collecting revenue or recovering money owed to the state; and~~
~~—(l) Any other items determined by the board to represent cost savings or increased revenue))~~ team must identify the net savings, revenue, or both, accomplished during the project period. The calculations of net savings, revenue, or both, are not final until approved by the agency head, who may modify the team's calculations. The board may by rule establish criteria to be used in calculating net savings, revenue, or both.

Sec. 9. RCW 41.60.120 and 1993 c 467 s 6 are each amended to read as follows:

~~((At the conclusion of the eligible period, the board shall compare the expenditures or revenues for that period of each unit selected against the expenditures or revenues of that unit for the immediately preceding period or expenditures or revenues determined in accordance with RCW 41.60.110(1)(a) and (b) and, after making such adjustments as in the board's judgment are required to eliminate distortions, shall determine the amount, if any, that the unit has reduced the unit's cost of operations or increased its level of services or generated additional revenues to the state in the eligible period. Adjustments to eliminate distortions may include any legislative increases in employee compensation and~~

~~inflationary increases in the cost of services, materials, and supplies. Adjustments to additional revenue may include changes in client populations and the effects of legal changes. If the board also determines that a unit qualifies for an award, the board shall award to the employees of that unit a sum up to twenty-five percent of the amount determined to be the savings or revenue increases to the state for the level of services rendered. The amount awarded shall be divided and distributed in accordance with board rules to the employees of the unit, except that employees who worked for that unit less than the full period during which the unit conducted a teamwork incentive program shall receive only a pro rata share based on the fraction of the period worked for that unit. No individual share of the unit award may exceed the maximum award established by rule adopted by the board.)~~ The agency head may recommend an award amount to the board. The board shall make the final determination as to whether an award will be made in accordance with applicable rules governing the teamwork incentive program. Awards will be based on the payment award scale. Funds for ~~((this))~~ the teamwork incentive award shall be drawn from the agencies in which the unit is located or from the benefiting fund or account without appropriation when additional revenue is generated to the fund or account.

Awards may be paid to teams for process changes which generate new or additional money for the general fund or any other funds of the state. The director of the office of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund in amounts equal to award payments made by the general fund, for innovations generating new or additional money for those other funds.

Sec. 10. RCW 41.60.150 and 1989 c 56 s 5 are each amended to read as follows:

Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees, either individually or as a class, for accomplishments including outstanding achievements, safety performance, ~~((and))~~ longevity, public service, or service as employee suggestion evaluators and implementors. Recognition awards may not exceed ~~((one))~~ two hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award.

Passed the Senate March 16, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 51

[Substitute Senate Bill 5651]

TIMBER SALES—TAX PAYMENTS BEFORE RELEASE OF PERFORMANCE BOND

AN ACT Relating to timber sales; and amending RCW 79.01.132.

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

Sec. 1. RCW 79.01.132 and 1997 c 116 s 1 are each amended to read as follows:

When any timber, fallen timber, stone, gravel, or other valuable material on state lands is sold separate from the land, it may be sold as a lump sum sale or as a scale sale. Lump sum sales under five thousand dollars appraised value shall be paid for in cash. The initial deposits required in RCW 79.01.204, not to exceed twenty-five percent of the actual or projected purchase price, but in the case of lump sum sales over five thousand dollars not less than five thousand dollars, shall be made on the day of the sale, and in the case of those sales appraised below the amount specified in RCW 79.01.200, the department of natural resources may require full cash payment on the day of sale. The purchaser shall notify the department of natural resources before any timber is cut and before removal or processing of any valuable materials on the sale area, at which time the department of natural resources may require, in the amount determined by the department, advance payment for the removal, processing, and/or cutting of timber or other valuable materials, or bank letters of credit, payment bonds, or assignments of savings accounts acceptable to the department as adequate security. The amount of such advance payments and/or security shall at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for. The initial deposit shall be maintained until all contract obligations of the purchaser are satisfied: **PROVIDED HOWEVER**, That all or a portion of said initial deposit may be applied as the final payment for said materials in the event the department of natural resources determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

In all cases where timber, fallen timber, stone, gravel, or other valuable material is sold separate from the land, the same shall revert to the state if not removed from the land within the period specified in the sale contract. Said specified period shall not exceed five years from the date of the purchase thereof: **PROVIDED**, That the specified periods in the sale contract for stone, sand, fill material, or building stone shall not exceed twenty years: **PROVIDED FURTHER**, That in all cases where, in the judgment of the department of natural resources, the purchaser is acting in good faith and endeavoring to remove such materials, the department of natural resources may extend the time for the removal thereof for any period not exceeding twenty years from the date of purchase for the stone, sand, fill material or building stone or for a total of ten years beyond the normal termination date specified in the original sale contract for all other material,

upon payment to the state of a sum to be fixed by the department of natural resources, based on the estimated loss of income per acre to the state resulting from the granting of the extension but in no event less than fifty dollars per extension, plus interest on the unpaid portion of the contract. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. The applicable rate of interest as fixed at the date of sale and the maximum extension payment shall be set forth in the contract. The method for calculating the unpaid portion of the contract upon which such interest shall be paid by the purchaser shall be set forth in the contract. The department of natural resources shall pay into the state treasury all sums received for such extension and the same shall be credited to the fund to which was credited the original purchase price of the material so sold. However, a direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board of natural resources shall, by resolution, establish the value amount of a direct sale not to exceed twenty thousand dollars in appraised sale value, and establish procedures to assure that competitive market prices and accountability will be guaranteed.

Any time that the department of natural resources sells timber by contract that includes a performance bond, the department shall require the purchaser to present proof of any and all taxes paid prior to the release of the performance bond. Within thirty days of payment of taxes due by the timber purchaser, the county treasurer shall provide certified evidence of taxes paid, clearly disclosing the sale contract number.

The provisions of this section apply unless otherwise provided by statute.

The board of natural resources shall establish procedures to protect against cedar theft and to ensure adequate notice is given for persons interested in purchasing cedar.

Passed the Senate March 13, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 52

[Senate Bill 5652]

EMINENT DOMAIN APPRAISER FEES—STATUTORY LIMITS

AN ACT Relating to statutory limits on appraiser fees in eminent domain proceedings; and amending RCW 8.25.020.

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

Sec. 1. RCW 8.25.020 and 1967 ex.s. c 137 s 1 are each amended to read as follows:

There shall be paid by the condemnor in respect of each parcel of real property acquired by eminent domain or by consent under threat thereof, in addition to the

fair market value of the property, a sum equal to the various expenditures actually and reasonably incurred by those with an interest or interests in said parcel in the process of evaluating the condemnor's offer to buy the same, but not to exceed a total of ~~((two))~~ seven hundred fifty dollars. In the case of multiple interests in a parcel, the division of such sum shall be determined by the court or by agreement of the parties.

Passed the Senate March 12, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 53

[Senate Bill 5772]

CONFIDENTIALITY OF RECORDS—

DOMESTIC VIOLENCE OR SEXUAL ASSAULT VICTIMS

AN ACT Relating to confidentiality of records of participants in programs for victims of domestic violence or sexual assault; amending RCW 40.24.070; and declaring an emergency.

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

Sec. 1. RCW 40.24.070 and 1998 c 138 s 3 are each amended to read as follows:

The secretary of state may not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

- (1) If requested by a law enforcement agency, to the law enforcement agency;
- (2) If directed by a court order, to a person identified in the order; or
- (3) ~~((If certification has been canceled; or~~
- ~~—(4)))~~ To verify the participation of a specific program participant, in which case the secretary may only confirm information supplied by the requester.

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

Passed the Senate March 12, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 54

[Substitute Senate Bill 5928]

GOOD FAITH COMMUNICATIONS—SELF-REGULATORY ORGANIZATIONS

AN ACT Relating to good faith communications to self-regulatory organizations delegated authority by government agencies; and amending RCW 4.24.510.

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

Sec. 1. RCW 4.24.510 and 1989 c 234 s 2 are each amended to read as follows:

A person who in good faith communicates a complaint or information to any agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency (~~shall be immune from civil liability on claims based upon the communication to the agency~~) or organization. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

Passed the Senate March 13, 1999.

Passed the House April 7, 1999.

Approved by the Governor April 20, 1999.

Filed in Office of Secretary of State April 20, 1999.

CHAPTER 55

[Senate Bill 5954]

STATE ASSISTANCE RECIPIENTS—PROCEEDS FROM TORT RECOVERY

AN ACT Relating to torts committed against recipients of state assistance; and amending RCW 43.20B.070.

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

Sec. 1. RCW 43.20B.070 and 1990 c 100 s 8 are each amended to read as follows:

(1) An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive assistance under chapter 74.09 RCW, or residential care provided by the department at a hospital for the mentally ill or habilitative care center for the developmentally disabled, shall:

~~((+))~~ **(a)** Notify the department at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tortfeasor or the tortfeasor's insurer, or both; and

~~((2))~~ **(b)** Give the department thirty days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness.

(2) The proceeds from any recovery made pursuant to any action or claim described in RCW 43.20B.060 that is necessary to fully satisfy the department's lien against recovery shall be placed in a trust account or in the registry of the court until the department's lien is satisfied.

Passed the Senate March 13, 1999.
Passed the House April 7, 1999.
Approved by the Governor April 20, 1999.
Filed in Office of Secretary of State April 20, 1999.

CHAPTER 56

[Senate Bill 5211]

JURISDICTION OF LIMITED JURISDICTION COURTS

AN ACT Relating to the jurisdiction of limited jurisdiction courts; and amending RCW 3.50.330, 3.66.068, and 35.20.255.

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

Sec. 1. RCW 3.50.330 and 1984 c 258 s 117 are each amended to read as follows:

For a period not to exceed five years after imposition of sentence for a defendant sentenced under RCW 46.61.5055 and two years after imposition of sentence for all other offenses, the court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.

Sec. 2. RCW 3.66.068 and 1983 c 156 s 2 are each amended to read as follows:

For a period not to exceed five years after imposition of sentence for a defendant sentenced under RCW 46.61.5055 and two years after imposition of sentence for all other offenses, the court has continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.

Sec. 3. RCW 35.20.255 and 1983 c 156 s 8 are each amended to read as follows:

Judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violations of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence, fix the terms of any such deferral or suspension, and provide for such probation and parole as in their opinion is reasonable and necessary under the circumstances of the case, but in no case shall it extend for more than five years from the date of conviction for a defendant to be sentenced under RCW 46.61.5055 and two years from the date of conviction for all other offenses. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.

Passed the Senate March 12, 1999.
 Passed the House April 7, 1999.
 Approved by the Governor April 20, 1999.
 Filed in Office of Secretary of State April 20, 1999.

CHAPTER 57

[Senate Bill 6030]

LEWIS AND CLARK HIGHWAY

AN ACT Relating to the Lewis and Clark Highway; and amending RCW 47.22.020.

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

Sec. 1. RCW 47.22.020 and 1970 ex.s. c 51 s 176 are each amended to read as follows:

There is established the Lewis and Clark Highway, which shall be composed of the following existing routes: State route 193 from the junction of state route 12 at Clarkston to Wawawai River Road; state route ((number)) 12 from Clarkston to Waitsburg; state route ((number)) 124 from Waitsburg to Pasco (west); state route ((number)) 12 from Pasco to Waitsburg via Wallula and Walla Walla (east); state routes 395 and 82 from state route 12, through the Tri-Cities region, to the junction at state route 14; state route ((number)) 14 from ((Pasco)) the junction of state routes 395 and 82 to Maryhill; state routes ((numbers)) 14(;) and 5 ((and-4)) from Maryhill to ((Naselle junction)) state route 432 through Longview to state route 4; state route 4 from Longview to the junction with state route 101 near the vicinity of Johnson's landing; state route ((number)) 401 from Naselle junction to Megler; ((and)) state route ((number)) 101 from Megler ((to)) through Ilwaco and Seaview to the junction with state route 4; state route spur/alternate state route 101; state route loop 100; state route spur 100; and state route 103.

Passed the Senate March 12, 1999.
 Passed the House April 7, 1999.
 Approved by the Governor April 20, 1999.
 Filed in Office of Secretary of State April 20, 1999.

CHAPTER 58

[House Bill 1175]

STREET RODS

AN ACT Relating to street rods; and amending RCW 46.04.571 and 46.37.500.

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

Sec. 1. RCW 46.04.571 and 1996 c 225 s 4 are each amended to read as follows:

"Street rod vehicle" is a motor vehicle, other than a motorcycle, that meets the following conditions:

(1)(a) The vehicle was manufactured before 1949, ~~((or))~~ (b) the vehicle has been assembled or reconstructed using major component parts of a motor vehicle manufactured before 1949, or (c) the vehicle was assembled or manufactured after 1949, to resemble a vehicle manufactured before 1949; and

(2)(a) The vehicle has been modified in its body style or design through the use of nonoriginal or reproduction components, such as frame, engine, drive train, suspension, or brakes in a manner that does not adversely affect its safe performance as a motor vehicle or render it unlawful for highway use, or (b) the body has been constructed from nonoriginal materials or has been altered dimensionally or in shape and appearance from the original manufactured body.

Sec. 2. RCW 46.37.500 and 1988 c 15 s 2 are each amended to read as follows:

(1) Except as authorized under subsection (2) of this section, no person may operate any motor vehicle, trailer, or semitrailer that is not equipped with fenders, covers, flaps, or splash aprons adequate for minimizing the spray or splash of water or mud from the roadway to the rear of the vehicle. All such devices shall be as wide as the tires behind which they are mounted and extend downward at least to the center of the axle.

(2) A motor vehicle that is not less than forty years old ~~((and))~~ or a street rod vehicle that is owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads.

Passed the House March 9, 1999.

Passed the Senate January 11, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 59

[House Bill 1331]

PARKS AND RECREATION COMMISSION—USE OF VOLUNTEERS

AN ACT Relating to the use of volunteers by the state parks and recreation commission; and amending RCW 43.51.040, 43.51.130, and 43.51.140.

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

Sec. 1. RCW 43.51.040 and 1989 c 175 s 106 are each amended to read as follows:

The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt, promulgate, issue, and enforce rules pertaining to the use, care, and administration of state parks and parkways. The commission shall cause a copy of the rules to be kept posted in a conspicuous place in every state park to which

they are applicable, but failure to post or keep any rule posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules as shall be adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than forty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED FURTHER, That television station leases shall be subject to the provisions of RCW 43.51.063, only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary. Commission expenses relating to its use of volunteer assistance shall be limited to premiums or assessments for the insurance of volunteers by the department of labor and industries, compensation of staff who assist volunteers, materials and equipment used in authorized volunteer projects, training, reimbursement of volunteer travel as provided in RCW 43.03.050 and 43.03.060, and other reasonable expenses relating to volunteer recognition. The commission, at its discretion, may waive commission fees otherwise applicable to volunteers. The commission shall not use volunteers to replace or supplant classified positions. The use of volunteers may not lead to the elimination of any employees or permanent positions in the bargaining unit.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways. Option agreements executed under authority of this subdivision shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions,

or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

Sec. 2. RCW 43.51.130 and 1982 c 156 s 1 are each amended to read as follows:

The state parks and recreation commission may grant permits to individuals, groups, churches, charities, organizations, agencies, clubs, or associations to improve any state park or parkway, or any lands belonging to the state and withdrawn from sale under the provisions of this chapter. ~~((Any expenses borne by the state shall be limited to premiums or assessments for the insurance of volunteers by the department of labor and industries, compensation of staff who assist volunteers, minimal use of natural resources contained within such public lands, paint, incidental materials, and equipment used to assist volunteers.))~~ These improvements shall not interfere with access to or use of such public lands or facilities by the general public and shall benefit the public in terms of safety, recreation, aesthetics, or wildlife or natural area preservation. These improvements on public lands and facilities shall be for the use of all members of the general public.

Sec. 3. RCW 43.51.140 and 1982 c 156 s 2 are each amended to read as follows:

Any such individual, group, organization, agency, club, or association desiring to obtain such permit shall make application therefor in writing to the commission, describing the lands proposed to be improved and stating the nature of the proposed improvement. ~~((Prior to granting a permit, the commission shall determine that the applicants are persons of good standing in the community in which they reside.))~~

Passed the House March 8, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 60

[House Bill 1394]

DEFENSE OF DURESS—HOMICIDE BY ABUSE

AN ACT Relating to the duress defense; and amending RCW 9A.16.060.

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

Sec. 1. RCW 9A.16.060 and 1975 1st ex.s. c 260 s 9A.16.060 are each amended to read as follows:

(1) In any prosecution for a crime, it is a defense that:

(a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous bodily injury; and

(b) That such apprehension was reasonable upon the part of the actor; and

(c) That the actor would not have participated in the crime except for the duress involved.

(2) The defense of duress is not available if the crime charged is murder ~~((or))~~, manslaughter, or homicide by abuse.

(3) The defense of duress is not available if the actor intentionally or recklessly places himself or herself in a situation in which it is probable that he or she will be subject to duress.

(4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse.

Passed the House March 8, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 61

[House Bill 1425]

WATER OR SEWER UTILITIES—CANADIAN CONTRACTS

AN ACT Relating to municipal water or sewer utilities; and adding new sections to chapter 35.92 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 35.92 RCW to read as follows:

A city or town contiguous with 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 city or town and other areas within its water service area, and inhabitants thereof, and residents of Canada with an ample supply of water.

NEW SECTION. **Sec. 2.** A new section is added to chapter 35.92 RCW to read as follows:

A city or town contiguous with Canada may contract with a Canadian corporation for the discharge of sewage from all or any portion of the city's or town's sewer service area into the sewer system of the Canadian corporation. A

city or town contiguous with Canada may contract with a Canadian corporation for the construction, operation, or maintenance of sewers and sewage treatment and disposal facilities for their joint use and benefit upon such terms and conditions and for such period of time as the contracting parties may determine, which may include vesting one of the contracting parties with the sole authority to construct, operate, or maintain the facilities with the other contracting party or parties paying an agreed-upon portion of the expenses to the party with sole authority to construct, operate, or maintain the facilities.

Passed the House March 5, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 62

[Engrossed House Bill 1459]

REDUCED UTILITY RATES FOR LOW-INCOME CITIZENS

AN ACT Relating to reduced rate utility services for low-income citizens; amending RCW 80.28.010, 80.28.080, 80.28.090, and 80.28.100; and adding a new section to chapter 80.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 80.28 RCW to read as follows:

Upon request by an electrical or gas company, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers.

****Sec. 2. RCW 80.28.010 and 1995 c 399 s 211 are each amended to read as follows:***

(1) Except as provided in section 1 of this act, all charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a

payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who

default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices.

**Sec. 2 was vetoed. See message at end of chapter.*

**Sec. 3. RCW 80.28.080 and 1985 c 427 s 2 are each amended to read as follows:*

Except as provided in section 1 of this act, no gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: PROVIDED, That the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become

disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this paragraph: PROVIDED FURTHER, That water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested: AND PROVIDED FURTHER, That gas companies, electrical companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW 80.28.240.

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

*Sec. 3 was vetoed. See message at end of chapter.

**Sec. 4. RCW 80.28.090 and 1961 c 14 s 80.28.090 are each amended to read as follows:*

Except as provided in section I of this act, no gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

*Sec. 4 was vetoed. See message at end of chapter.

**Sec. 5. RCW 80.28.100 and 1961 c 14 s 80.28.100 are each amended to read as follows:*

Except as provided in section I of this act, no gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

*Sec. 5 was vetoed. See message at end of chapter.

Passed the House March 3, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 21, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 21, 1999.

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

"I am returning herewith, without my approval as to sections 2, 3, 4, and 5, Engrossed House Bill No. 1459 entitled:

"AN ACT Relating to reduced rate utility services for low-income citizens:"

This bill will allow the Utilities and Transportation Commission to approve rate discounts for low-income customers of investor-owned electric and gas companies. Section 1 of the bill provides all of the authority necessary for the Commission to do so. Sections 2 through 5 of the bill appear to have been added to clarify the legislature's intent. However, those sections add legal ambiguities and are not necessary to fulfill the policy intent of the legislation.

For this reason, I have vetoed sections 2, 3, 4, and 5 of Engrossed House Bill No. 1459.

With the exception of sections 2, 3, 4, and 5, Engrossed House Bill No. 1459 is approved."

CHAPTER 63

[House Bill 1491]

COWLITZ COUNTY DREDGE SPOILS

AN ACT Relating to the use of dredge spoils on the LT-1 and Cook Ferry Road Site in Cowlitz County; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds and declares that the December 19, 1991, Washington state conveyance of the Mt. St. Helens Recovery Program, LT-1 and Cook Ferry Road Sites, to Cowlitz County, should be amended to enable Cowlitz County to use dredge spoils revenues for recreational purposes throughout the county.

The legislature further declares that the department of transportation shall execute sufficient legal release to accomplish the following:

(1) Dredge spoil revenues from either the LT-1 or Cook Ferry Road Site must be dedicated for recreational facilities and recreational administration costs throughout the county;

(2) Any mining excavation must meet the requirements of the Shoreline Management Act of 1971 as identified in chapter 90.58 RCW;

(3) Both the LT-1 and Cook Ferry Road Site must be preserved as a long-term dredging facility;

(4) All other requirements in the December 19, 1991, conveyance between the state of Washington and Cowlitz County will remain in effect; and

(5) The LT-1 and Cook Ferry Road Site remains subject to any agreements with the United States Army Corps of Engineers and other agencies of the federal government.

Passed the House March 8, 1999.
 Passed the Senate April 6, 1999.
 Approved by the Governor April 21, 1999.
 Filed in Office of Secretary of State April 21, 1999.

CHAPTER 64

[Substitute House Bill 1535]

HEALTH MAINTENANCE ORGANIZATIONS' REIMBURSEMENT OF PODIATRIC PHYSICIANS AND SURGEONS

AN ACT Relating to health maintenance organizations' reimbursement of podiatric physicians and surgeons; adding a new section to chapter 48.46 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.46 RCW to read as follows:

Except to the extent that a health maintenance organization contracts with a group medical practice which only treats that organization's patients, a health maintenance organization may not discriminate in the terms and conditions, including reimbursement, for the provision of foot care services between physicians and surgeons licensed under chapters 18.22, 18.57, and 18.71 RCW.

NEW SECTION. Sec. 2. This act is intended to be procedural and not to impair the obligation of any existing contract.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 8, 1999.
 Passed the Senate April 8, 1999.
 Approved by the Governor April 21, 1999.
 Filed in Office of Secretary of State April 21, 1999.

CHAPTER 65

[House Bill 1654]

VETERANS DEFINED

AN ACT Relating to veterans; and amending RCW 41.04.005.

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

Sec. 1. RCW 41.04.005 and 1996 c 300 s 1 are each amended to read as follows:

(1) As used in RCW 41.04.005, 41.16.220, and 41.20.050 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.04.010, 41.16.220, 41.20.050, 41.40.170, 73.04.110, or 73.08.080 has received an honorable discharge or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, (~~during the period of armed conflict;~~) from December 7, 1941, to (~~August 15, 1945~~) December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service (~~during the period of armed conflict;~~) from December 7, 1941, to (~~August 15, 1945~~) December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era, which was the period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; and Bosnia, Operation Joint Endeavor.

Passed the House March 16, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 66

[House Bill 1734]

LICENSED PSYCHOLOGISTS—UNIFORM DISCIPLINARY ACT

AN ACT Relating to licensed psychologists; and amending RCW 18.83.054 and 18.83.135.

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

Sec. 1. RCW 18.83.054 and 1987 c 150 s 51 are each amended to read as follows:

(1) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter, except that the term "unlicensed practice" shall be defined by RCW 18.83.180 rather than RCW 18.130.020.

(2) A person who holds a license under this chapter is subject to the uniform disciplinary act, chapter 18.130 RCW, at all times the license is maintained.

Sec. 2. RCW 18.83.135 and 1994 c 35 s 4 are each amended to read as follows:

In addition to the authority prescribed under RCW 18.130.050, the 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; and

(3) To apply the provisions of the uniform disciplinary act, chapter 18.130 RCW, to all persons licensed as psychologists under this chapter.

Passed the House March 9, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 67

[House Bill 2010]

HISTORIC CEMETERIES

AN ACT Relating to historic cemeteries; and amending RCW 68.60.050.

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

Sec. 1. RCW 68.60.050 and 1989 c 44 s 5 are each amended to read as follows:

(1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the ~~((cemetery board))~~ office of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the office of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

Passed the House March 11, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 68

[Substitute House Bill 2071]

WORKERS' COMPENSATION COVERAGE—LIMITED LIABILITY COMPANIES

AN ACT Relating to workers' compensation coverage for a member or manager of a limited liability company; and amending RCW 51.12.020.

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

Sec. 1. RCW 51.12.020 and 1997 c 314 s 18 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance

with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400(~~(20)~~) (21) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance agent, insurance broker, or insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and 48.17.030, respectively.

(12) Services performed by a booth renter as defined in RCW 18.16.020. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation.

Passed the House March 9, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 69

[House Bill 2116]

PUBLIC UTILITY DISTRICTS—DISPOSITION OF PROPERTY

AN ACT Relating to public utility district disposition of property; and amending RCW 54.16.180.

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

Sec. 1. RCW 54.16.180 and 1994 c 81 s 78 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 district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market value of equipment or materials; **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 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)) or town ((city 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.

Passed the House March 15, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 70

[House Bill 2181]

LENGTH OF CONTROLLED ATMOSPHERE STORAGE

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 1994 c 23 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))~~ sixty days for other apples.

Passed the House March 12, 1999.
Passed the Senate April 6, 1999.
Approved by the Governor April 21, 1999.
Filed in Office of Secretary of State April 21, 1999.

CHAPTER 71

[House Bill 2206]

COUNTY ELECTED OFFICIALS—ABANDONMENT OF DUTIES

AN ACT Relating to declaratory judgment actions finding that county elected officials have abandoned their responsibilities; amending RCW 36.17.010 and 36.17.050; and adding a new section to chapter 36.16 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 36.16 RCW to read as follows:

The county legislative authority of a county may cause an action to be filed in the superior court of that county for a declaratory judgment finding that a county elected official has abandoned his or her responsibilities by being absent from the county and failing to perform his or her official duties for a period of at least thirty consecutive days, but not including: (1) Absences approved by the county legislative authority; or (2) absences arising from leave taken for legitimate medical or disability purposes. If such a declaratory judgment is issued, the county official is no longer eligible to receive compensation from the date the declaratory judgment is issued until the court issues a subsequent declaratory judgment finding that the county official has commenced performing his or her responsibilities.

Sec. 2. RCW 36.17.010 and 1991 c 363 s 51 are each amended to read as follows:

The county officers of the counties of this state shall receive a salary for the services required of them by law, or by virtue of their office, which salary shall be full compensation for all services of every kind and description rendered by them. However, if the superior court issues a declaratory judgment under section 1 of this

act finding that a county officer has abandoned his or her duties, the county officer may not be paid compensation.

Sec. 3. RCW 36.17.050 and 1963 c 4 s 36.17.050 are each amended to read as follows:

The auditor shall not draw his warrant for the salary of any officer until the latter shall have first filed his duplicate receipt with the auditor, properly signed by the treasurer, showing he has made the last required monthly statement and settlement. If the superior court issues a declaratory judgment under section 1 of this act finding that a county officer has abandoned his or her duties, the county officer may not be paid a salary.

Passed the House March 11, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 21, 1999.

Filed in Office of Secretary of State April 21, 1999.

CHAPTER 72

[Substitute Senate Bill 5010]

SEXUAL MISCONDUCT BY EMPLOYEES OF CUSTODIAL AGENCIES

AN ACT Relating to sexual misconduct by employees of custodial agencies; adding a new section to chapter 13.40 RCW; adding a new section to chapter 72.09 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 13.40 RCW to read as follows:

(1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an offender has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(h) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an offender has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any offender.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an offender, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an offender. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or 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 release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.17 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with offenders. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an offender against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Offender" means a person under the jurisdiction or supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010.

NEW SECTION. Sec. 2. A new section is added to chapter 72.09 RCW to read as follows:

(1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or 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 release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.17 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with inmates. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an inmate against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Inmate" means an inmate as defined in RCW 72.09.015 or a person under the supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010.

NEW SECTION. Sec. 3. Nothing in section 1 or 2 of this act affects any collective bargaining agreement in place on the effective date of this act.

Passed the Senate March 12, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 73

[Senate Bill 5012]

POLLUTION LIABILITY INSURANCE TRUST ACCOUNT—ADMINISTRATIVE AND OPERATING COSTS

AN ACT Relating to the pollution liability insurance program trust account; amending RCW 70.148.020; and providing an expiration date.

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

Sec. 1. RCW 70.148.020 and 1998 c 245 s 114 are each amended to read as follows:

(1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. ~~((The account is subject to allotment procedures under chapter 43.88 RCW.))~~ Expenditures for

payment of ~~((the costs of administering the program))~~ administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

(4) This section expires June 1, 2001.

Passed the Senate March 12, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 74

[Substitute Senate Bill 5030]

WASHINGTON STATE PATROL SURVIVING SPOUSE RETIREMENT ALLOWANCE— ANNUAL INCREASE

AN ACT Relating to the Washington state patrol surviving spouse retirement allowance; amending RCW 43.43.120 and 43.43.274; and adding new sections to chapter 43.43 RCW.

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

Sec. 1. RCW 43.43.120 and 1983 c 81 s 1 are each amended to read as follows:

As used in the following sections, unless a different meaning is plainly required by the context:

- (1) "Retirement system" means the Washington state patrol retirement system.
- (2) "Retirement fund" means the Washington state patrol retirement fund.
- (3) "State treasurer" means the treasurer of the state of Washington.
- (4) "Member" means any person included in the membership of the retirement fund.
- (5) "Employee" means any commissioned employee of the Washington state patrol.

(6)(a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrolmen; drivers' license examiners; weighmasters; vehicle safety inspectors; central wireless operators; and warehousemen.

(7) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(8) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(9) "Retirement board" means the board provided for in this chapter.

(10) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(11) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(12) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(13) "Prior service" shall mean all services rendered by a member to 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.

(14) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

(15) "Average final salary" shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington

state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(16) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(17) Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender.

(18) "Director" means the director of the department of retirement systems.

(19) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(20) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(21) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under RCW 43.43.300.

(22) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW to read as follows:

(1) Beginning July 1, 1999, and annually thereafter, the surviving spouse allowance provided in RCW 43.43.270 shall be adjusted by the annual increase amount. To be eligible, a surviving spouse must have attained at least age sixty-six by July 1st in the calendar year in which the annual increase is provided.

(2) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time.

Sec. 3. RCW 43.43.274 and 1997 c 72 s 1 are each amended to read as follows:

Effective July 1, 1997, the retirement allowance under RCW 43.43.260 and 43.43.270(2) shall not be less than twenty dollars per month for each year of service. Effective July 1, 1999, and annually thereafter, the retirement allowance provided under this section shall be adjusted by the annual increase amount. If the member has elected to receive a reduced retirement allowance under RCW 43.43.280(2), the minimum retirement allowance under this section shall be reduced accordingly.

NEW SECTION. Sec. 4. A new section is added to chapter 43.43 RCW to read as follows:

By July 1, 2000, the department of retirement systems shall adopt rules that allow a member to select, in lieu of benefits under RCW 43.43.270, an actuarially equivalent retirement option that pays the member a reduced retirement allowance and upon death shall be continued throughout the life of a lawful surviving spouse.

The continuing allowance to the lawful surviving spouse shall be subject to the yearly increase provided by RCW 43.43.260(5) in lieu of the annual increase provided in section 2 of this act.

Passed the Senate March 11, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 75

[Senate Bill 5037]

COURT OF APPEALS—NEW JUDICIAL POSITION

AN ACT Relating to the court of appeals; amending RCW 2.06.020; and adding a new section to chapter 2.06 RCW.

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

Sec. 1. RCW 2.06.020 and 1993 c 420 s 1 are each amended to read as follows:

The court shall have three divisions, one of which shall be headquartered in Seattle, one of which shall be headquartered in Spokane, and one of which shall be headquartered in Tacoma:

(1) The first division shall have twelve judges from three districts, as follows:

(a) District 1 shall consist of King county and shall have eight judges;

(b) District 2 shall consist of Snohomish county and shall have two judges;

and

(c) District 3 shall consist of Island, San Juan, Skagit and Whatcom counties and shall have two judges.

(2) The second division shall have ~~((six))~~ seven judges from the following districts:

(a) District 1 shall consist of Pierce county and shall have ~~((two))~~ three judges;

(b) District 2 shall consist of Clallam, Grays Harbor, Jefferson, Kitsap, Mason, and Thurston counties and shall have two judges;

(c) District 3 shall consist of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum counties and shall have two judges.

(3) The third division shall have five judges from the following districts:

(a) District 1 shall consist of Ferry, Lincoln, Okanogan, Pend Oreille, Spokane and Stevens counties and shall have two judges;

(b) District 2 shall consist of Adams, Asotin, Benton, Columbia, Franklin, Garfield, Grant, Walla Walla, and Whitman counties and shall have one judge;

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat and Yakima counties and shall have two judges.

NEW SECTION. **Sec. 2.** A new section is added to chapter 2.06 RCW to read as follows:

The new judicial position for the second division, district 1, Pierce county, created pursuant to the 1999 amendment to RCW 2.06.020 shall become effective July 1, 2000, and shall be filled by gubernatorial appointment.

The person appointed by the governor shall hold office until the general election to be held in November 2000. At the general election, the judge appointed shall be entitled to run for a term of six years or until the second Monday in January 2007, and until a successor is elected and qualified. Thereafter, the judge shall be elected for a term of six years and until a successor is elected and qualified, commencing with the second Monday in January succeeding the election.

Passed the Senate March 8, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 76

[Engrossed Senate Bill 5141]

NEWBORN SCREENING FEES

AN ACT Relating to newborn screening fees; and amending RCW 70.83.040.

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

Sec. 1. RCW 70.83.040 and 1991 c 3 s 350 are each amended to read as follows:

When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. The department has the authority to collect a reasonable fee, from the parents or other responsible party of each infant screened to fund specialty clinics that provide treatment services for hemoglobin diseases, phenylketonuria, congenital adrenal hyperplasia, and congenital hypothyroidism. The fee may be collected through the facility where the screening specimen is obtained.

Passed the Senate March 12, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 77

[Senate Bill 5156]

HOUSING AUTHORITIES—BOARD MEMBERSHIP

AN ACT Relating to voluntary expansion of local housing authority boards of commissioners to comply with federal law; and amending RCW 35.82.040.

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

Sec. 1. RCW 35.82.040 and 1998 c 140 s 1 are each amended to read as follows:

Except as provided in RCW 35.82.045, when the governing body of a city adopts a resolution declaring that there is a need for a housing authority, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for the city. When the governing body of a county adopts a resolution declaring that there is a need for a housing authority, it shall appoint five persons as commissioners of the authority created for the county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created, unless the commissioner is an employee of a separately elected county official other than the county governing body in a county with a population of less than one hundred seventy-five thousand as of the 1990 federal census, and the total government employment in that county exceeds forty percent of total employment. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to this chapter. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his or her services for the authority, in any capacity, but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Except as provided in RCW 35.82.045, three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The mayor (or in the case of an authority for a county, the governing body of the county) shall designate which of the commissioners appointed shall be the first chair of the commission and he or she shall serve in the capacity of chair until the expiration of his or her term of office as commissioner. When the office of the chair of the authority becomes vacant, the authority shall

select a chair from among its commissioners. An authority shall select from among its commissioners a vice-chair, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

If federal law requires that the membership of the board of commissioners of a local authority contains one member who is directly assisted by the authority, the board may by resolution temporarily or permanently increase its size to six members. The board may determine the length of the term of the position filled by a directly assisted member. A person appointed to such a position may serve in that position only as long as he or she is directly assisted by the authority.

Passed the Senate March 3, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 78

[Senate Bill 5178]

THIRD GRADE STANDARDIZED ACHIEVEMENT TESTS—CORRECTING REFERENCES

AN ACT Relating to correcting references to the third grade standardized achievement test; and amending RCW 28A.165.030 and 28A.300.295.

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

Sec. 1. RCW 28A.165.030 and 1990 c 33 s 148 are each amended to read as follows:

Unless the context clearly indicates otherwise the definitions in this section apply throughout RCW 28A.165.010 through 28A.165.090.

(1) "Basic skills" means reading, mathematics, and language arts as well as readiness activities associated with such skills.

(2) "Placement testing" means the administration of objective measures by a school district for the purposes of diagnosing the basic skills achievement levels, determining the basic skills areas of greatest need, and establishing the learning assistance needs of individual students in conformance with instructions established by the superintendent of public instruction for such purposes.

(3) "Approved program" means a program conducted pursuant to a plan submitted by a district and approved by the superintendent of public instruction under RCW 28A.165.040.

(4) "Participating student" means a student in kindergarten through grade nine who scores below grade level in basic skills, as determined by placement testing,

and who is identified under RCW 28A.165.050 to receive additional services or support under an approved program.

(5) "Basic skills tests" means state-wide tests at the ~~((fourth and eighth))~~ third grade level~~((s))~~ established pursuant to RCW 28A.230.190 and eighth grade level established pursuant to RCW 28A.230.230.

Sec. 2. RCW 28A.300.295 and 1996 c 273 s 2 are each amended to read as follows:

The superintendent of public instruction shall establish a grant program to provide incentives for teachers, schools, and school districts to use the identified programs on the approved list in grades kindergarten through four. Schools, school districts, and educational service districts may apply for grants. Funds for the grants shall be used for in-service training and instructional materials. Grants shall be awarded and funds distributed not later than June 30, 1997, for programs in the 1996-97 and 1997-98 school years.

Priority shall be given to grant applications involving schools and school districts with the lowest mean percentile scores on the state-wide ~~((fourth))~~ third grade ~~((assessment))~~ test required under RCW 28A.230.190 among grant applicants.

Passed the Senate March 10, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 79

[Substitute Senate Bill 5191]

MOTOR CARRIERS WITHOUT A PERMIT—PENALTIES

AN ACT Relating to motor carriers operating without a permit; amending RCW 81.80.070; and prescribing penalties.

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

Sec. 1. RCW 81.80.070 and 1963 c 242 s 1 are each amended to read as follows:

(1) No "common carrier," "contract carrier," or "temporary carrier" shall operate for the transportation of property for compensation in this state without first obtaining from the commission a permit so to do. Permits heretofore issued or hereafter issued to any carrier, shall be exercised by said carrier to the fullest extent so as to render reasonable service to the public. Applications for common or contract carrier permits or extensions thereof shall be on file for a period of at least thirty days prior to the granting thereof unless the commission finds that special conditions require the earlier granting thereof.

(2) A permit or extension thereof shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the services proposed and conform to the provisions of this chapter and

the requirements, rules and regulations of the commission thereunder, and that such operations will be consistent with the public interest, and, in the case of common carriers, that the same are or will be required by the present or future public convenience and necessity, otherwise such application shall be denied.

(3) Nothing contained in this chapter shall be construed to confer upon any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state.

(4) A common carrier, contract carrier, or temporary carrier operating without the permit required in subsection (1) of this section, or who violates a cease and desist order of the commission issued under RCW 81.04.510, is subject to a penalty, under the process set forth in RCW 81.04.405, of one thousand five hundred dollars.

(5) Notwithstanding RCW 81.04.510, the commission may, in conjunction with issuing the penalty set forth in subsection (4) of this section, issue cease and desist orders to carriers operating without the permit required in subsection (1) of this section, and to all persons involved in the carriers' operations.

Passed the Senate March 3, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 80

[Senate Bill 5194]

INFORMATION TECHNOLOGY MANAGEMENT IN STATE GOVERNMENT

AN ACT Relating to information technology management in state government; amending RCW 43.105.020, 43.105.047, 43.105.052, 43.105.055, 43.105.080, 43.105.160, and 43.105.190; reenacting and amending RCW 43.105.170 and 43.105.180; and adding new sections to chapter 43.105 RCW.

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

Sec. 1. RCW 43.105.020 and 1993 c 280 s 78 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise, the following definitions shall apply:

- (1) "Department" means the department of information services;
- (2) "Board" means the information services board;
- (3) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately;
- (4) "Director" means the director of the department;
- (5) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing;

(6) "Backbone network" means the shared high-density portions of the state's telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network;

(7) "Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other means;

(8) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions;

(9) "Information services" means data processing, telecommunications, and office automation;

(10) "Equipment" means the machines, devices, and transmission facilities used in information processing, such as computers, word processors, terminals, telephones, and cables;

(11) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology investments;

(12) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources;

(13) "Proprietary software" means that software offered for sale or license;

~~((12))~~ (14) "Video telecommunications" means the electronic interconnection of two or more sites for the purpose of transmitting and/or receiving visual and associated audio information. Video telecommunications shall not include existing public television broadcast stations as currently designated by the department of community, trade, and economic development under chapter 43.330 RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 43.105 RCW to read as follows:

Information technology portfolios shall reflect (1) links among an agency's objectives, business plan, and technology; (2) analysis of the effect of an agency's proposed new technology investments on its existing infrastructure and business functions; and (3) analysis of the effect of proposed information technology investments on the state's information technology infrastructure.

NEW SECTION. Sec. 3. A new section is added to chapter 43.105 RCW to read as follows:

(1) Under the direction of the board, the department shall develop policies and procedures to implement a management and oversight structure based on the use of information technology portfolios.

(2) These policies and procedures shall support and conform to:

(a) The state strategic information technology plan developed under RCW 43.105.160(1) and section 2 of this act; and

(b) Technology standards established by the board.

NEW SECTION. Sec. 4. A new section is added to chapter 43.105 RCW to read as follows:

An agency information technology portfolio shall serve as the basis for making information technology decisions and plans including:

- (1) System refurbishment, acquisitions, and development efforts;
- (2) Setting goals and objectives for using information technology;
- (3) Assessments of information processing performance, resources, and capabilities;
- (4) Ensuring the appropriate transfer of technological expertise for the operation of new systems developed using external resources; and
- (5) Progress toward providing electronic access to public information.

Sec. 5. RCW 43.105.047 and 1992 c 20 s 9 are each amended to read as follows:

There is created the department of information services. The department shall be headed by a director appointed by the governor with the consent of the senate. The director shall serve at the governor's pleasure and shall receive such salary as determined by the governor. The director shall:

- (1) Appoint a confidential secretary and such deputy and assistant directors as needed to administer the department (~~((However, the total number of deputy and assistant directors shall not exceed four))~~);
- (2) Maintain and fund a strategic planning and policy component separate from the services component of the department;
- (3) Appoint, after consulting with the board, the assistant or deputy director for the planning component;
- (4) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter;
- (5) Report to the governor and the board any matters relating to abuses and evasions of this chapter; and
- (6) Recommend statutory changes to the governor and the board.

Sec. 6. RCW 43.105.052 and 1993 c 281 s 53 are each amended to read as follows:

The department shall:

- (1) Perform all duties and responsibilities the board delegates to the department, including but not limited to:
 - (a) The review of agency (~~(acquisition plans)~~) information technology portfolios and related requests; and
 - (b) Implementation of state-wide and interagency policies, standards, and guidelines;
- (2) Make available information services to state agencies and local governments on a full cost-recovery basis. These services may include, but are not limited to:
 - (a) Telecommunications services for voice, data, and video;
 - (b) Mainframe computing services;

(c) Support for departmental and microcomputer evaluation, installation, and use;

(d) Equipment acquisition assistance, including leasing, brokering, and establishing master contracts;

(e) Facilities management services for information technology equipment, equipment repair, and maintenance service;

(f) Negotiation with local cable companies and local governments to provide for connection to local cable services to allow for access to these public and educational channels in the state;

(g) Office automation services;

(h) System development services; and

(i) Training.

These services are for discretionary use by customers and customers may elect other alternatives for service if those alternatives are more cost-effective or provide better service. Agencies may be required to use the backbone network portions of the telecommunications services during an initial start-up period not to exceed three years;

(3) Establish rates and fees for services provided by the department to assure that the services component of the department is self-supporting. A billing rate plan shall be developed for a two-year period to coincide with the budgeting process. The rate plan shall be subject to review at least annually by the customer (~~((oversight committees))~~) advisory board. The rate plan shall show the proposed rates by each cost center and will show the components of the rate structure as mutually determined by the department and the customer (~~((oversight committees))~~) advisory board. The same rate structure will apply to all user agencies of each cost center. The rate plan and any adjustments to rates shall be approved by the office of financial management. The services component shall not subsidize the operations of the strategic planning and policy component;

(4) With the advice of the information services board and agencies, develop a state strategic information technology plan and performance reports as required under RCW 43.105.160;

(5) Develop plans for the department's achievement of state-wide goals and objectives set forth in the state strategic information technology plan required under RCW 43.105.160. These plans shall address such services as telecommunications, central and distributed computing, local area networks, office automation, and end user computing. The department shall seek the advice of the customer (~~((oversight committees))~~) advisory board and the board in the development of these plans;

(6) Under direction of the information services board and in collaboration with the department of personnel, and other agencies as may be appropriate, develop training plans and coordinate training programs that are responsive to the needs of agencies;

(7) Identify opportunities for the effective use of information services and coordinate appropriate responses to those opportunities;

(8) Assess agencies' projects, acquisitions, plans, information technology portfolios, or overall information processing performance as requested by the board, agencies, the director of financial management, or the legislature. Agencies may be required to reimburse the department for agency-requested reviews;

(9) Develop planning, budgeting, and expenditure reporting requirements, in conjunction with the office of financial management, for agencies to follow;

(10) Assist the office of financial management with budgetary and policy review of agency plans for information services;

(11) Provide staff support from the strategic planning and policy component to the board for:

(a) Meeting preparation, notices, and minutes;

(b) Promulgation of policies, standards, and guidelines adopted by the board;

(c) Supervision of studies and reports requested by the board;

(d) Conducting reviews and assessments as directed by the board;

(12) Be the lead agency in coordinating video telecommunications services for all state agencies and develop, pursuant to board policies, standards and common specifications for leased and purchased telecommunications equipment. The department shall not evaluate the merits of school curriculum, higher education course offerings, or other education and training programs proposed for transmission and/or reception using video telecommunications resources. Nothing in this section shall abrogate or abridge the legal responsibilities of licensees of telecommunications facilities as licensed by the federal communication commission on March 27, 1990; and

(13) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

Sec. 7. RCW 43.105.055 and 1987 c 504 s 9 are each amended to read as follows:

(1) The director shall appoint advisory committees to assist the department. Advisory committees shall include, but are not limited to, the customer (~~oversight committees~~) advisory board.

(2) The customer (~~oversight committees~~) advisory board shall provide the department with advice concerning the type, quality, and cost of the department's services. The (~~number of~~) customer (~~oversight committees~~) advisory board and (~~their~~) its membership shall be determined by the director to assure that all services are subject to (~~oversight by~~) advice from a representative selection of customers. At least annually, these committees shall meet to recommend, review, and comment on the service goals and objectives of the department and the budgets for operations of those services and the rates to be charged for those services. The (~~committees~~) advisory board may call upon the board to resolve disputes between agencies and the department which may arise with regard to service offerings, budgets, or rates.

(3) ~~((Any))~~ The customer advisory ~~((committee created by the director))~~ board may be convened by a majority of its members, by its chair, or by the director.

Sec. 8. RCW 43.105.080 and 1992 c 235 s 6 are each amended to read as follows:

There is created a revolving fund to be known as the data processing revolving fund in the custody of the state treasurer. The revolving fund shall be used for the acquisition of equipment, software, supplies, and services and the payment of salaries, wages, 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 bonds issued for capital projects, by the department, Washington State University's computer services center, the department of personnel's personnel information systems division, the office of financial management's financial systems management group, and other users as jointly determined by the department and the office of financial management. The revolving fund is subject to the allotment procedure provided under chapter 43.88 RCW. Disbursements from the revolving fund for the services component of the department are not subject to appropriation. Disbursements for the strategic planning and policy component of the department are subject to appropriation. All disbursements from the fund are subject to the allotment procedures provided under chapter 43.88 RCW. The department shall establish and implement a billing structure to assure all agencies pay an equitable share of the costs.

As used in this section, the word "supplies" shall not be interpreted to delegate or abrogate the division of purchasing's responsibilities and authority to purchase supplies as described in RCW 43.19.190 and 43.19.200.

Sec. 9. RCW 43.105.160 and 1998 c 177 s 3 are each amended to read as follows:

(1) The department shall prepare a state strategic information technology plan which shall establish a state-wide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services. The plan shall be developed in accordance with the standards and policies established by the board and shall be submitted to the board for review, modification as necessary, and approval. The department shall seek the advice of the board in the development of this plan.

The plan approved under this section shall be updated as necessary and submitted to the governor, the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives, and, during the legislative session, to the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. During the legislative interim, the approved plan must be submitted to the legislative transportation committee, instead of the standing transportation committees.

(2) The department shall prepare a biennial state performance report on information technology based on agency performance reports required under RCW

43.105.170 and other information deemed appropriate by the department. The report shall include, but not be limited to:

(a) An analysis, based upon agency portfolios, of the state's information technology infrastructure, including its value, condition, and capacity;

(b) An evaluation of performance relating to information technology;

~~((b))~~ (c) An assessment of progress made toward implementing the state strategic information technology plan, including progress toward electronic access to public information and enabling citizens to have two-way access to public records, information, and services;

~~((e))~~ (d) An analysis of the success or failure, feasibility, progress, costs, and timeliness of implementation of major information technology projects under RCW 43.105.190;

~~((d))~~ (e) Identification of benefits, cost avoidance, and cost savings generated by major information technology projects developed under RCW 43.105.190; and

~~((e))~~ (f) An inventory of state information services, equipment, and proprietary software.

Copies of the report shall be distributed biennially to the governor, the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives, and, during the legislative session, the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. During the legislative interim, the report must be submitted to the legislative transportation committee, instead of the standing transportation committees.

Sec. 10. RCW 43.105.170 and 1996 c 171 s 10 and 1996 c 137 s 13 are each reenacted and amended to read as follows:

(1) Each agency shall develop an ~~((agency strategic))~~ information technology ~~((plan which establishes agency goals and objectives regarding the development and use of information technology))~~ portfolio consistent with section 3 of this act. The superintendent of public instruction shall develop its ~~((plan))~~ portfolio in conjunction with educational service districts and state-wide or regional providers of K-12 education information technology services.

~~((Plans))~~ (2) Agency portfolios shall include, but not be limited to, the following:

(a) A baseline assessment of the agency's information technology resources and capabilities that will serve as the benchmark for subsequent planning and performance measures;

(b) A statement of the agency's mission, goals, and objectives for information technology, including goals and objectives for achieving electronic access to agency records, information, and services;

~~((b))~~ (c) An explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan developed under RCW 43.105.160;

~~((e))~~ (d) An implementation strategy to provide electronic access to public records and information. This implementation strategy must be assembled to include:

- (i) Compliance with Title 40 RCW;
- (ii) Adequate public notice and opportunity for comment;
- (iii) Consideration of a variety of electronic technologies, including those that help transcend geographic locations, standard business hours, economic conditions of users, and disabilities;
- (iv) Methods to educate both state employees and the public in the effective use of access technologies;

~~((d))~~ (e) Projects and resources required to meet the objectives of the ~~((plan))~~ portfolio; and

~~((e))~~ (f) Where feasible, estimated schedules and funding required to implement identified projects.

~~((2-Plans))~~ (3) Portfolios developed under subsection (1) of this section shall be submitted to the department for review and forwarded along with the department's recommendations to the board for review and approval. The board may reject, require modification to, or approve ~~((plans))~~ portfolios as deemed appropriate by the board. ~~((Plans))~~ Portfolios submitted under this subsection shall be updated and submitted for review and approval as necessary.

~~((3))~~ (4) Each agency shall prepare and submit to the department a biennial performance report that evaluates progress toward the objectives articulated in its information technology portfolio. The superintendent of public instruction shall develop its ~~((plan))~~ portfolio in conjunction with educational service districts and state-wide or regional providers of K-12 education information technology services. The report shall include:

(a) An evaluation of the agency's performance relating to information technology;

(b) An assessment of progress made toward implementing the agency ~~((strategic))~~ information technology ~~((plan))~~ portfolio;

(c) Progress toward electronic access to public information and enabling citizens to have two-way interaction for obtaining information and services from agencies; and

(d) An inventory of agency information services, equipment, and proprietary software.

~~((4))~~ (5) The department, with the approval of the board, shall establish standards, elements, form, and format for plans and reports developed under this section.

~~((5))~~ (6) Agency activities to increase electronic access to public records and information, as required by this section, must be implemented within available resources and existing agency planning processes.

~~((6))~~ (7) The board may exempt any agency from any or all of the requirements of this section.

Sec. 11. RCW 43.105.180 and 1996 c 171 s 11 and 1996 c 137 s 14 are each reenacted and amended to read as follows:

Upon request of the office of financial management, the department shall evaluate agency budget requests for major information technology projects identified under RCW 43.105.190, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or state-wide or regional providers of K-12 education information technology services. The department shall submit recommendations for funding all or part of such requests to the office of financial management.

The department, with the advice and approval of the office of financial management, shall establish criteria, consistent with portfolio-based information technology management, for the evaluation of agency budget requests under this section. These budget requests shall be made in the context of an agency's information technology portfolio; technology initiatives underlying budget requests are subject to board review. Criteria shall include, but not be limited to: Feasibility of the proposed projects, consistency with the state ((and agency)) strategic information technology plan((s)), consistency with ((agency goals and objectives)) information technology portfolios, appropriate provision for public electronic access to information and services, costs, and benefits.

Sec. 12. RCW 43.105.190 and 1998 c 177 s 4 are each amended to read as follows:

(1) The department, with the approval of the board, shall establish standards and policies governing the planning, implementation, and evaluation of major information technology projects, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or state-wide or regional providers of K-12 education information technology services. The standards and policies shall:

(a) Establish criteria to identify projects which are subject to this section. Such criteria shall include, but not be limited to, significant anticipated cost, complexity, or state-wide significance of the project; and

(b) Establish a model process and procedures which agencies shall follow in developing and implementing projects ((plans)) within their information technology portfolios. Agencies may propose, for approval by the department, a process and procedures unique to the agency. The department may accept or require modification of such agency proposals or the department may reject such agency proposals and require use of the model process and procedures established under this subsection. Any process and procedures developed under this subsection shall require (i) distinct and identifiable phases upon which funding may be based, (ii) user validation of products through system demonstrations and testing of prototypes and deliverables, and (iii) other elements identified by the board.

~~((Project plans and any agreements established under such plans shall be approved and mutually agreed upon by the director, the director of financial management, and the head of the agency proposing the project.))~~

The director may terminate a major project if the director determines that the project is not meeting or is not expected to meet anticipated performance standards.

(2) The office of financial management shall establish policies and standards ~~((governing))~~ consistent with portfolio-based information technology management to govern the funding of projects developed under this section. The policies and standards shall provide for:

(a) Funding of a project under terms and conditions mutually agreed to by the director, the director of financial management, and the head of the agency proposing the project. However, the office of financial management may require incremental funding of a project on a phase-by-phase basis whereby funds for a given phase of a project may be released only when the office of financial management determines, with the advice of the department, that the previous phase is satisfactorily completed;

(b) Acceptance testing of products to assure that products perform satisfactorily before they are accepted and final payment is made; and

(c) Other elements deemed necessary by the office of financial management.

(3) The department shall evaluate projects ~~((at three stages of development as follows: (a) initial needs assessment; (b) feasibility study including definition of scope, development of tasks and timelines, and estimated costs and benefits; and (c))~~ based on the demonstrated business needs and benefits; cost; technology scope and feasibility; impact on the agency's information technology portfolio and on the state-wide infrastructure; and final project implementation plan based upon available funding.

Copies of project evaluations conducted under this subsection shall be submitted to the office of financial management and the chairs, ranking minority members, and staff coordinators of the appropriations committees of the senate and house of representatives.

If there are projects that receive funding from a transportation fund or account, copies of those projects' evaluations conducted under this subsection must be submitted, during the legislative session, to the chairs and ranking minority members of the transportation committees of the senate and the house of representatives. During the legislative interim, the project evaluations must be submitted to the legislative transportation committee.

Passed the Senate March 12, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 81

[Engrossed Substitute Senate Bill 5195]

EMPLOYEE BENEFITS

AN ACT Relating to protecting employee benefits; and amending RCW 6.15.020.

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

Sec. 1. RCW 6.15.020 and 1997 c 20 s 1 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection shall not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in sections 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity described in section((s)) 403(b) (~~(or 408)~~) of (~~the internal~~

revenue)) such code ((of 1986, as amended,)) or an individual retirement account described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account described in section 220 of such code; or an education individual retirement account described in section 530 of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" also means any rights accruing on account of money paid currently or in advance for purchase of tuition units under the advanced college tuition payment program in chapter 28B.95 RCW. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington (~~or any political subdivision thereof~~) under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.40 or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality ((of any)) of the ((foregoing)) government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless contrary to applicable federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an individual retirement account held in the name of or on account of the other spouse, the account holder spouse. At the death of the nonaccount holder spouse, the nonaccount holder spouse may transfer or distribute the community property interest of the nonaccount holder spouse in the account holder spouse's individual retirement account to the nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including ~~((any))~~ a nonjudicial dispute resolution agreement entered into pursuant to RCW 11.96.170 or other order entered under chapter 11.96 RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonaccount holder spouse's community property interest in an individual retirement account shall be

considered a person entitled to the full protection of subsection (3) of this section. The nonaccount holder spouse's consent to a beneficiary designation by the account holder spouse with respect to an individual retirement account shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonaccount holder spouse's community property interest in an individual retirement account. For purposes of this subsection, the term "nonaccount holder spouse" means the spouse of the person in whose name the individual retirement account is maintained. The term "individual retirement account" includes an individual retirement account and an individual retirement annuity both as described in section 408 of the internal revenue code of 1986, as amended, a Roth individual retirement account as described in section 408A of the internal revenue code of 1986, as amended, and an individual retirement bond as described in section 409 of the internal revenue code as in effect before January 1, 1984. As used in this subsection, an order of a court of competent jurisdiction includes an agreement, as that term is used under RCW 11.96.170.

Passed the Senate February 19, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 82

[Substitute Senate Bill 5215]

TUITION WAIVERS FOR VETERANS

AN ACT Relating to veterans' exemptions from higher education tuition and fees; amending RCW 28B.15.620 and 28B.15.628; adding a new section to chapter 28B.15 RCW; and declaring an emergency.

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

Sec. 1. RCW 28B.15.620 and 1995 c 349 s 1 are each amended to read as follows:

(1) The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedoms that define and distinguish our nation. The legislature also finds that veterans of the Vietnam conflict suffered during and after the war as the country anguished over its involvement in the conflict. It is the intent of the legislature to honor Vietnam veterans for the public service they have provided to their country. It is the further intent of the legislature that, for eligible Vietnam veterans, colleges and universities waive tuition and fee increases that have occurred since October 1, 1977.

(2) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the 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 that occur after October 1, 1977, if the veteran qualifies as a resident student under RCW 28B.15.012.

(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, 1999.))~~

Sec. 2. RCW 28B.15.628 and 1996 c 169 s 1 are each amended to read as follows:

(1) The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedoms that define and distinguish our nation. It is the intent of the legislature to honor Persian Gulf combat zone veterans for the public service they have provided to their country. It is the further intent of the legislature that, for eligible Persian Gulf combat zone veterans, institutions of higher education waive tuition and fee increases that have occurred after the 1990-91 academic year.

(2) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the Persian Gulf combat zone from all or a portion of increases in tuition and fees that occur after the 1990-91 academic year, if 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.

(3) For the purposes of this section, "a veteran of the Persian Gulf combat zone" means a person who served on active duty in the armed forces of the United States during any portion of the 1991 calendar year in the Persian Gulf combat zone as designated by executive order of the president of the United States.

~~((4) This section expires June 30, 1999.))~~

NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.15 RCW to read as follows:

Technical colleges are encouraged to provide veterans of the Vietnam conflict as defined in RCW 28B.15.620 and veterans of the Persian Gulf combat zone as defined in RCW 28B.15.628 with tuition waivers.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate March 4, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 83

[Senate Bill 5432]

CHARITABLE DEDUCTIONS FROM RETIREMENT ACCOUNTS

AN ACT Relating to authorizing deductions from retirement allowances for charitable purposes; and reenacting and amending RCW 41.40.052.

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

Sec. 1. RCW 41.40.052 and 1991 c 365 s 22 and 1991 c 35 s 92 are each reenacted and amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

Passed the Senate March 5, 1999.
Passed the House April 9, 1999.
Approved by the Governor April 22, 1999.
Filed in Office of Secretary of State April 22, 1999.

CHAPTER 84

[Senate Bill 5262]

SLEEP MONITORING

AN ACT Relating to an exemption to allow unregulated persons to perform sleep monitoring tasks; and amending RCW 18.89.040.

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

Sec. 1. RCW 18.89.040 and 1997 c 334 s 4 are each amended to read as follows:

(1) A respiratory care practitioner licensed under this chapter is employed in the treatment, management, diagnostic testing, rehabilitation, and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other systems, and is under the direct order and under the qualified medical direction of a physician. The practice of respiratory care includes:

(a) The use and administration of prescribed medical gases, exclusive of general anesthesia;

(b) The use of air and oxygen administering apparatus;

(c) The use of humidification and aerosols;

(d) The administration, to the extent of training, as determined by the secretary, of prescribed pharmacologic agents related to respiratory care;

(e) The use of mechanical ventilatory, hyperbaric, and physiological support;

(f) Postural drainage, chest percussion, and vibration;

(g) Bronchopulmonary hygiene;

(h) Cardiopulmonary resuscitation as it pertains to advanced cardiac life support or pediatric advanced life support guidelines;

(i) The maintenance of natural and artificial airways and insertion, without cutting tissues, of artificial airways, as prescribed by a physician;

(j) Diagnostic and monitoring techniques such as the collection and measurement of cardiorespiratory specimens, volumes, pressures, and flows;

(k) The insertion of devices to draw, analyze, infuse, or monitor pressure in arterial, capillary, or venous blood as prescribed by a physician or an advanced registered nurse practitioner as authorized by the nursing care quality assurance commission under chapter 18.79 RCW; and

(l) Diagnostic monitoring of and therapeutic interventions for desaturation, ventilatory patterns, and related sleep abnormalities to aid the physician in diagnosis. This subsection does not prohibit any person from performing sleep monitoring tasks as set forth in this subsection under the supervision or direction of a licensed health care provider.

(2) Nothing in this chapter prohibits or restricts:

(a) The practice of a profession by individuals who are licensed under other laws of this state who are performing services within their authorized scope of practice, that may overlap the services provided by respiratory care practitioners;

(b) The practice of respiratory care by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed for him or her by the laws and rules of the United States;

(c) The practice of respiratory care by a person pursuing a supervised course of study leading to a degree or certificate in respiratory care as a part of an accredited and approved educational program, if the person is designated by a title that clearly indicates his or her status as a student or trainee and limited to the extent of demonstrated proficiency of completed curriculum, and under direct supervision;

(d) The use of the title "respiratory care practitioner" by registered nurses authorized under chapter 18.79 RCW; or

(e) The practice without compensation of respiratory care of a family member.

Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person licensed under this chapter.

Passed the Senate March 3, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 85

[Senate Bill 5278]

FOREIGN DEGREE-GRANTING INSTITUTIONS

AN ACT Relating to foreign degree-granting institutions; and amending RCW 28B.90.020.

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

Sec. 1. RCW 28B.90.020 and 1993 c 181 s 3 are each amended to read as follows:

A foreign degree-granting institution that submits evidence satisfactory to the board of its authorized status in its country of domicile and its intent to establish an educational facility in the state is entitled to operate a branch campus (~~in the state~~) as defined in RCW 28B.90.010. Upon receipt of the satisfactory evidence, the board (~~shall~~) may certify that the branch campus of the foreign degree-granting institution is approved to operate in the state under this chapter, for as long as the foreign degree-granting institution retains its authorized status in its country of domicile.

Passed the Senate March 4, 1999.
Passed the House April 9, 1999.
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CHAPTER 86

[Senate Bill 5301]

TRAFFIC OFFENSE PROCESSING BY DISTRICT AND MUNICIPAL COURTS

AN ACT Relating to the processing of traffic offenses by district and municipal courts; amending RCW 7.68.035, 46.01.260, 46.20.293, 46.55.105, 46.63.020, and 46.64.025; adding a new section to chapter 46.52 RCW; and repealing RCW 46.52.100 and 46.61.475.

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

Sec. 1. RCW 7.68.035 and 1997 c 66 s 9 are each amended to read as follows:

(1)(a) Whenever any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(b) Whenever any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW, except as provided in subsection (2) of this section, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, (~~46.52.100~~) section 4 of this act, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.5249, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW

10.82.070. Each county shall deposit fifty percent of the money it receives per case or cause of action under subsection (1) of this section and retains under RCW 10.82.070, not less than one and seventy-five one-hundredths percent of the remaining money it retains under RCW 10.82.070 and the money it retains under chapter 3.62 RCW, and all money it receives under subsection (7) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under

subsection (4) of this section to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section.

Sec. 2. RCW 46.01.260 and 1998 c 207 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the director, in his or her discretion, may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his or her office which have been microfilmed or photographed or are more than five years old. If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.520 and 46.61.522 or records of deferred prosecutions granted under RCW 10.05.120 and shall maintain such records permanently on file.

(b) The director shall not, within fifteen years from the date of conviction or adjudication, destroy records of the following:

(i) Convictions or adjudications of the following offenses: RCW 46.61.502 or 46.61.504; or

(ii) If the offense was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.5249 or any other violation that was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection.

(c) For purposes of section 4 of this act and RCW (~~46.52.100 and~~) 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses.

Sec. 3. RCW 46.20.293 and 1990 c 250 s 44 are each amended to read as follows:

The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under section 4 of this act and RCW (~~46.52.100 and~~) 13.50.200, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further, the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against the person and shall collect for the copy a fee of four dollars and fifty cents to be deposited in the highway safety fund.

NEW SECTION. Sec. 4. A new section is added to chapter 46.52 RCW to read as follows:

(1) Every district court, municipal court, and clerk of a superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by the court or its traffic violations bureau regarding the charge, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every traffic charge deposited with or presented to the court or traffic violations bureau. In the case of a record of a conviction for a violation of RCW 46.61.502 or 46.61.504, and notwithstanding any other provision of law, the court shall maintain the record permanently.

(2) Within fourteen days after the conviction, forfeiture of bail, or finding that a traffic infraction was committed for a violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, the clerk of the court in which the conviction was had, bail was forfeited, or the finding of commission was made shall prepare and immediately forward to the director of licensing at Olympia an abstract of the court record covering the case. Report need not be made of a finding involving the illegal parking or standing of a vehicle.

(3) The abstract must be made upon a form or forms furnished by the director and must include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved if required by the director, the nature of the offense, the date of hearing, the plea, the judgment, whether the offense was an alcohol-related offense as defined in RCW 46.01.260(2), whether the incident that gave rise to the offense charged resulted in a fatality, whether bail was forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty, as the case may be.

(4) In courts where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the department of licensing, the court may electronically provide the information required in subsections (2), (3), and (5) of this section.

(5) The superior court clerk shall also forward a like report to the director upon the conviction of a person of a felony in the commission of which a vehicle was used.

(6) The director shall keep all abstracts received under this section at the director's office in Olympia. The abstracts must be open to public inspection during reasonable business hours.

(7) The officer, prosecuting attorney, or city attorney signing the charge or information in a case involving a charge of driving under the influence of intoxicating liquor or any drug shall immediately request from the director an abstract of convictions and forfeitures. The director shall furnish the requested abstract.

Sec. 5. RCW 46.55.105 and 1998 c 203 s 2 are each amended to read as follows:

(1) The abandonment of any vehicle creates a prima facie presumption that the last registered owner of record is responsible for the abandonment and is liable for costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

(2) If an unauthorized vehicle is found abandoned under subsection (1) of this section and removed at the direction of law enforcement, the last registered owner of record is guilty of a traffic infraction, unless the vehicle is redeemed as provided in RCW 46.55.120. In addition to any other monetary penalty payable under chapter 46.63 RCW, the court shall not consider all monetary penalties as having been paid until the court is satisfied that the person found to have committed the infraction has made restitution in the amount of the deficiency remaining after disposal of the vehicle under RCW 46.55.140.

(3) A vehicle theft report filed with a law enforcement agency relieves the last registered owner of liability under subsection (2) of this section for failure to redeem the vehicle. However, the last registered owner remains liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle under subsection (1) of this section. Nothing in this section limits in any way the registered owner's rights in a civil action or as restitution in a criminal action against a person responsible for the theft of the vehicle.

(4) Properly filing a report of sale or transfer regarding the vehicle involved in accordance with RCW 46.12.101(1) relieves the last registered owner of liability under subsections (1) and (2) of this section. If the date of sale as indicated on the report of sale is on or before the date of impoundment, the buyer identified on the latest properly filed report of sale with the department is assumed liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction. If the date of sale is after the date of impoundment, the previous registered owner is assumed to be liable for such costs. A licensed vehicle dealer is not liable under subsections (1) and (2) of this section if the dealer, as transferee or assignee of the last registered owner of the vehicle involved, has complied with the requirements of RCW 46.70.122 upon selling or otherwise disposing of the vehicle, or if the dealer has timely filed a transitional ownership record or report of sale under RCW 46.12.103. In that case the person to whom the licensed vehicle dealer has sold or transferred the vehicle is assumed

liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

(5) For the purposes of reporting notices of traffic infraction to the department under RCW 46.20.270 and ~~((46.52.100))~~ section 4 of this act, and for purposes of reporting notices of failure to appear, respond, or comply regarding a notice of traffic infraction to the department under RCW 46.63.070(5), a traffic infraction under subsection (2) of this section is not considered to be a standing, stopping, or parking violation.

(6) A notice of infraction for a violation of this section may be filed with a court of limited jurisdiction organized under Title 3, 35, or 35A RCW, or with a violations bureau subject to the court's jurisdiction.

Sec. 6. RCW 46.63.020 and 1998 c 294 s 3 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 and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

- (14) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;
- (17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (18) RCW 46.25.170 relating to commercial driver's licenses;
- (19) Chapter 46.29 RCW relating to financial responsibility;
- (20) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (21) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (22) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (23) RCW 46.48.175 relating to the transportation of dangerous articles;
- (24) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (25) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (26) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (27) ~~((RCW 46.52.100 relating to driving under the influence of liquor or drugs;~~
- ~~—((28)))~~ (28) 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;
- ~~((29)))~~ (28) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- ~~((30)))~~ (29) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- ~~((31)))~~ (30) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- ~~((32)))~~ (31) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- ~~((33)))~~ (32) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- ~~((34)))~~ (33) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- ~~((35)))~~ (34) RCW 46.61.500 relating to reckless driving;
- ~~((36)))~~ (35) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

- ~~((37))~~ (36) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
~~((38))~~ (37) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
~~((39))~~ (38) RCW 46.61.522 relating to vehicular assault;
~~((40))~~ (39) RCW 46.61.5249 relating to first degree negligent driving;
~~((41))~~ (40) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
~~((42))~~ (41) RCW 46.61.530 relating to racing of vehicles on highways;
~~((43))~~ (42) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
~~((44))~~ (43) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
~~((45))~~ (44) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
~~((46))~~ (45) Chapter 46.65 RCW relating to habitual traffic offenders;
~~((47))~~ (46) RCW 46.68.010 relating to false statements made to obtain a refund;
~~((48))~~ (47) 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;
~~((49))~~ (48) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
~~((50))~~ (49) RCW 46.72A.060 relating to limousine carrier insurance;
~~((51))~~ (50) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;
~~((52))~~ (51) RCW 46.72A.080 relating to false advertising by a limousine carrier;
~~((53))~~ (52) Chapter 46.80 RCW relating to motor vehicle wreckers;
~~((54))~~ (53) Chapter 46.82 RCW relating to driver's training schools;
~~((55))~~ (54) 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;
~~((56))~~ (55) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 7. RCW 46.64.025 and 1979 c 158 s 175 are each amended to read as follows:

Whenever any person ~~((has for a period of fifteen or more days violated))~~ violates his or her written promise to appear in court, or fails to appear for a scheduled court hearing, the court in which the defendant ~~((so promised))~~ failed to appear shall ~~((forthwith))~~ promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which ~~((such promise was given))~~ the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

- (1) RCW 46.52.100 and 1998 c 204 s 1, 1998 c 165 s 9, 1995 c 219 s 3, 1994 c 275 s 15, 1991 c 363 s 123, 1987 c 3 s 18, 1985 c 302 s 6, & 1983 c 2 s 12; and
- (2) RCW 46.61.475 and 1965 ex.s. c 155 s 58.

Passed the Senate March 13, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 87

[Substitute Senate Bill 5313]

MENTAL HEALTH RECORD AUDITS

AN ACT Relating to the scope of mental health record audits; and adding a new section to chapter 48.43 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

Every health carrier that provides coverage for any outpatient mental health service shall comply with the following requirements:

(1) In performing a utilization review of mental health services for a specific enrollee, the utilization review is limited to accessing only the specific health care information contained in the enrollee's record.

(2) In performing an audit of a provider that has furnished mental health services to a carrier's enrollees, the audit is limited to accessing only the records of enrollees covered by the specific health carrier for which the audit is being performed, except as otherwise permitted by RCW 70.02.050 and 71.05.630.

Passed the Senate March 16, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 88

[Senate Bill 5365]

DIETARY SUPPLEMENTS CONTAINING ALCOHOL

AN ACT Relating to the preparation and sale of dietary supplements containing alcohol; and amending RCW 66.12.070.

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

Sec. 1. RCW 66.12.070 and 1933 ex.s. c 62 s 51 are each amended to read as follows:

(1) Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, or dietary supplement as defined by the federal food and drug administration, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, dietary supplement, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section.

(4) Dietary supplements that contain more than one-half of one percent alcohol which are prepared and sold under this section shall be clearly labeled and the ingredients listed on the label in accordance with the provisions of the federal food, drug, and cosmetics act (21 U.S.C. Sec. 321) as now or hereafter amended.

Passed the Senate March 13, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 89

[Senate Bill 5401]

HYDRAULIC PROJECTS TO REPAIR 1990 FLOOD DAMAGE—REPEALED

AN ACT Relating to hydraulic projects; and repealing RCW 75.20.1001.

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

NEW SECTION. Sec. 1. RCW 75.20.1001 and 1993 sp.s. c 2 s 31 & 1991 c 322 s 12 are each repealed.

Passed the Senate March 13, 1999.
Passed the House April 9, 1999.
Approved by the Governor April 22, 1999.
Filed in Office of Secretary of State April 22, 1999.

CHAPTER 90

[Senate Bill 5402]

FOREST PRACTICES APPEALS BOARD—TECHNICAL CORRECTIONS

AN ACT Relating to the forest practices appeals board; and reenacting RCW 76.09.220.

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

Sec. I. RCW 76.09.220 and 1997 c 423 s 2 and 1997 c 290 s 5 are each reenacted to read as follows:

(1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions

which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

Passed the Senate March 13, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 91

[Substitute Senate Bill 5457]

DIVERSION AGREEMENTS FOR JUVENILES

AN ACT Relating to conditions involving diversion agreements for juveniles under diversion programs authorized by state law prior to January 1, 1999; amending RCW 13.40.080; and reenacting and amending RCW 13.40.160.

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

Sec. 1. RCW 13.40.080 and 1997 c 338 s 70 are each amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by the victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed; ~~(and)~~

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of the victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian and victims who have contacted the diversionary unit and, to the extent possible, involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.

(b) If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (4)(c), the juvenile shall

remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may not require the juvenile to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Divertees and potential divertees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(7) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(8) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(9) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

(10) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(~~(9)~~) (7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(11) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

(a) The fact that a charge or charges were made;

(b) The fact that a diversion agreement was entered into;

(c) The juvenile's obligations under such agreement;

(d) Whether the alleged offender performed his or her obligations under such agreement; and

(e) The facts of the alleged offense.

(12) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. When a diversionary unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(13) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection shall include the authority to refer the juvenile to community-based counseling or treatment programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or

she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(~~((9))~~) (7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversionary unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(14) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(15) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(16) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section.

Sec. 2. RCW 13.40.160 and 1997 c 338 s 25 and 1997 c 265 s 1 are each reenacted and amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsections (2), (~~((4))~~) (3), and (~~((5))~~) (4) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsections (2), (~~((4))~~) (3), and (~~((5))~~) (4) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option

C of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) ~~((Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in a diversion agreement as provided in RCW 13.40.080(2)).~~

~~—(4))~~ When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, 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 respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a)(i) Frequency and type of contact between the offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) 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.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex

offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option C, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

- (b)(i) Devote time to a specific education, employment, or occupation;
- (ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;
- (iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;
- (iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;
- (v) Report as directed to the court and a probation counselor;
- (vi) Pay all court-ordered legal financial obligations, perform community service, or any combination thereof;
- (vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;
- (viii) Comply with the conditions of any court-ordered probation bond; or
- (ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection ~~((4))~~ (3), 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. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection 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 (4) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "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. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection ~~((4))~~ (3) is not appealable under RCW 13.40.230.

~~((5))~~ (4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

~~((6))~~ (5) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(1)(b)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

~~((7))~~ (6) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

~~((8))~~ (7) Except as provided under subsection ~~((4))~~ (3) or ~~((5))~~ (4) of this section or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

~~((9))~~ (8) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

Passed the Senate March 4, 1999.
Passed the House April 8, 1999.
Approved by the Governor April 22, 1999.
Filed in Office of Secretary of State April 22, 1999.

CHAPTER 92

[Engrossed Senate Bill 5564]

TAXATION OF PARK TRAILERS AND TRAVEL TRAILERS

AN ACT Relating to taxation of park trailers and travel trailers; amending RCW 82.50.530; and creating a new section.

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

Sec. 1. RCW 82.50.530 and 1993 c 32 s 1 are each amended to read as follows:

No mobile home, travel trailer, or camper which is a part of the inventory of mobile homes, travel trailers, or campers held for sale by a dealer in the course of his or her business and no travel trailer or camper as defined in RCW 82.50.010 shall be listed and assessed for ad valorem taxation. However, if a park trailer as defined in RCW 46.04.622 has substantially lost its identity as a mobile unit by virtue of its being permanently ~~((fixed))~~ sited in location ~~((upon land owned or leased by the owner of the park trailer))~~ and placed on a ~~((permanent))~~ foundation of either posts or blocks with ~~((fixed pipe))~~ connections with sewer, water, or other utilities for the operation of installed fixtures and appliances, it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with the provisions of Title 84 RCW, including the provisions with respect to omitted property, except that a park trailer located on land ~~((leased))~~ not owned by the owner of the park trailer shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

NEW SECTION. **Sec. 2.** This act is effective for taxes levied in 1999 for collection in 2000 and thereafter.

Passed the Senate March 16, 1999.
Passed the House April 9, 1999.
Approved by the Governor April 22, 1999.
Filed in Office of Secretary of State April 22, 1999.

CHAPTER 93

[Senate Bill 5614]

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT CITATION—UNPREVENTABLE
EMPLOYEE MISCONDUCT

AN ACT Relating to restricting Washington industrial safety and health act citations as a result of employee misconduct; and amending RCW 49.17.120.

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

Sec. 1. RCW 49.17.120 and 1973 c 80 s 12 are each amended to read as follows:

(1) If upon inspection or investigation the director or his or her authorized representative believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this chapter, ~~((he))~~ the director shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(3) Each citation, or a copy or copies thereof, issued under the authority of this section and RCW 49.17.130 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices.

(4) No citation may be issued under this section or RCW 49.17.130 after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation.

(5)(a) No citation may be issued under this section if there is unpreventable employee misconduct that led to the violation, but the employer must show the existence of:

(i) A thorough safety program, including work rules, training, and equipment designed to prevent the violation;

(ii) Adequate communication of these rules to employees;

(iii) Steps to discover and correct violations of its safety rules; and

(iv) Effective enforcement of its safety program as written in practice and not just in theory.

(b) This subsection (5) does not eliminate or modify any other defenses that may exist to a citation.

Passed the Senate March 10, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 94

[Substitute Senate Bill 5615]

OBSOLETE TRANSPORTATION ACCOUNTS AND FUNDS

AN ACT Relating to obsolete transportation accounts and funds; amending RCW 43.84.092, 43.84.092, 43.84.092, 43.160.010, 46.68.095, 46.68.100, 46.68.110, 47.01.280, 47.02.130, 47.02.150, 47.10.801, 47.10.803, 47.12.125, 47.26.080, 47.26.084, 47.26.115, 47.26.140, 47.26.164, 47.26.425, 47.26.4252, 47.26.4254, 47.26.505, 47.56.772, 47.60.150, 47.60.326, 47.60.440, 82.36.025, 82.44.150, and 82.44.180; reenacting and amending RCW 46.68.090; creating new sections; repealing RCW 46.68.180, 46.68.190, 46.68.200, 47.02.180, 47.13.010, 47.13.020, 47.13.030, 47.13.040, 47.13.900, and 47.56.775; providing effective dates; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature.

Sec. 2. RCW 43.84.092 and 1997 c 218 s 5 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) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act,

and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The 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 drinking water assistance account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the highway infrastructure 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 real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, 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 transportation infrastructure account, the tuition recovery trust fund, 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, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(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 aeronautics account, the aircraft search and rescue account, ~~((the central Puget Sound public transportation account, the city hardship assistance account;))~~ the county arterial preservation account, the department of licensing services account, ~~((the economic development account;))~~ the essential rail assistance account, ~~((the essential rail banking account;))~~ the ferry bond retirement fund, ~~((the gasohol exemption holding account;))~~ 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 marine operating fund, 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 safety and education account, ~~((the small city 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, ~~((the transportation revolving loan account;))~~ and the urban arterial trust account.

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

Sec. 3. RCW 43.84.092 and 1997 c 218 s 5 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) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects

to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The 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 drinking water assistance account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the highway infrastructure 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 real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, 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 transportation infrastructure account, the tuition recovery trust fund, 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, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(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 aeronautics account, the aircraft search and rescue account, ~~((the central Puget Sound public transportation account, the city hardship assistance account;))~~ the county arterial preservation account, the department of licensing services account, ~~((the economic development account;))~~ the essential rail assistance account, ~~((the essential rail banking account;))~~ the ferry bond retirement fund, ~~((the gasoline exemption holding account;))~~ 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 marine operating fund;))~~ 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 safety and education account, ~~((the small city 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, ~~((the transportation revolving loan account;))~~ and the urban arterial trust account.

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

Sec. 4. RCW 43.84.092 and 1998 c 341 s 708 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) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The 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 drinking water assistance account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the highway infrastructure 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 real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, 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 combined plan II and plan III account, the transportation infrastructure account, the tuition recovery trust fund, 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 school employees' retirement system combined plan II and III account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(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 aeronautics account, the aircraft search and rescue account, ~~((the central Puget Sound public transportation account, the city hardship assistance account,))~~ the county arterial preservation account, the department of licensing services account, ~~((the economic development account,))~~ the essential rail assistance account, ~~((the essential rail banking account,))~~ the ferry bond retirement fund, ~~((the gasoline exemption holding account,))~~ 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 marine operating fund,))~~ 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 safety and education account, ~~((the small city 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, ~~((the transportation revolving loan account,))~~ and the urban arterial trust account.

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

Sec. 5. RCW 43.160.010 and 1996 c 51 s 1 are each amended to read as follows:

(1) The legislature finds that it is the public policy of the state of Washington to direct financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of the inhabitants of the state. Reducing unemployment and reducing the time citizens remain jobless is important for the economic welfare of the state. A valuable means of fostering economic development is the construction of public facilities which contribute to the stability and growth of the state's economic base. Strengthening the economic base through issuance of industrial development bonds, whether single or umbrella, further serves to reduce unemployment. Consolidating issues of industrial development bonds when feasible to reduce costs additionally advances the state's purpose to improve economic vitality. Expenditures made for these purposes as authorized in this chapter are declared to be in the public interest, and constitute a proper use of public funds. A community economic revitalization board is needed which shall aid the development of economic opportunities. The general objectives of the board should include:

(a) Strengthening the economies of areas of the state which have experienced or are expected to experience chronically high unemployment rates or below average growth in their economies;

(b) Encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment;

(c) Encouraging wider access to financial resources for both large and small industrial development projects;

(d) Encouraging new economic development or expansions to maximize employment;

(e) Encouraging the retention of viable existing firms and employment; and

(f) Providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment.

(2) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways

in the vicinity of new industries considering locating in this state or existing industries that are considering significant expansion.

(a) The legislature finds it desirable to provide a process whereby the need for diverse public works improvements necessitated by planned economic development can be addressed in a timely fashion and with coordination among all responsible governmental entities.

(b) ~~((It is the intent of the legislature to create an economic development account within the motor vehicle fund from which expenditures can be made by the department of transportation for state highway improvements necessitated by planned economic development. All such))~~ Transportation improvements ~~((must first be))~~ on state highways that have been approved by the ~~((state transportation commission and the))~~ community economic revitalization board must be approved by the transportation commission in accordance with the procedures established by RCW 43.160.074 and 47.01.280 to receive funding. ~~((It is further the intent of the legislature that such improvements not jeopardize any other planned highway construction projects. The improvements are intended to be of limited size and cost, and to include such items as additional turn lanes, signalization, illumination, and safety improvements.))~~

(3) The legislature also finds that the state's economic development efforts can be enhanced by providing funds to improve markets for those recyclable materials representing a large fraction of the waste stream. The legislature finds that public facilities which result in private construction of processing or remanufacturing facilities for recyclable materials are eligible for consideration from the board.

(4) The legislature finds that sharing economic growth state-wide is important to the welfare of the state. Rural natural resource impact areas do not share in the economic vitality of the Puget Sound region. Infrastructure is one of several ingredients that are critical for economic development. Rural natural resource impact areas generally lack the infrastructure necessary to diversify and revitalize their economies. It is, therefore, the intent of the legislature to increase the availability of funds to help provide infrastructure to rural natural resource impact areas.

Sec. 6. RCW 46.68.090 and 1994 c 225 s 2 and 1994 c 179 s 3 are each reenacted and 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)) (d) 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)) (e) For distribution to the transportation improvement account in the motor vehicle fund, an amount as provided in RCW 46.68.095(1);~~

~~((g)) (f) 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)) (g) 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)) (h) 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)) (i) 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)) (j) 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 gasoline 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;~~

~~—(m) 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. 7. RCW 46.68.095 and 1994 c 179 s 4 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 RCW 47.26.086))~~ and thirteen percent of one and one-half cents

shall be deposited in the ((small-city)) urban arterial trust account and expended in accordance with RCW ((47.26.115)) 47.26.080.

(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. 8. RCW 46.68.100 and 1994 c 179 s 5 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.

Sec. 9. RCW 46.68.110 and 1996 c 94 s 1 are each amended to read as follows:

Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.100(1) shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended

shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds shall be deducted monthly, as such funds accrue, to be deposited in the ~~((city hardship assistance))~~ urban arterial trust account~~((, hereby created))~~ in the motor vehicle fund, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program as of July 1, 1996, and July 1st of each odd-numbered year thereafter, shall be provided within sixty days to the treasurer and distributed in the manner prescribed in subsection (4) of this section;

(4) The balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management.

Sec. 10. RCW 47.01.280 and 1985 c 433 s 6 are each amended to read as follows:

(1) Upon receiving an application for improvements to an existing state highway or highways pursuant to RCW 43.160.074 from the community economic revitalization board, the transportation commission shall, in a timely manner, determine whether or not the proposed state highway improvements:

- (a) Meet the safety and design criteria of the department of transportation;
- (b) Will impair the operational integrity of the existing highway system;
- (c) Will affect any other improvements planned by the department; and
- (d) Will be consistent with its policies developed pursuant to RCW 47.01.071.

(2) Upon completion of its determination of the factors contained in subsection (1) of this section and any other factors it deems pertinent, the transportation commission shall forward its approval, as submitted or amended or disapproval of the proposed improvements to the board, along with any recommendation it may wish to make concerning the desirability and feasibility of the proposed development. If the transportation commission disapproves any proposed improvements, it shall specify its reasons for disapproval.

(3) Upon notification from the board of an application's approval pursuant to RCW 43.160.074, the transportation commission shall direct the department of transportation to carry out the improvements in coordination with the applicant.

(4) The transportation commission shall notify the legislative transportation committee of all state highway improvements to be carried out pursuant to RCW 43.160.074 and this section.

~~((5) All state highway improvements that are approved pursuant to RCW 43.160.074 and this section shall be charged to the economic development account of the motor vehicle fund created by RCW 47.10.803.))~~

Sec. 11. RCW 47.02.130 and 1990 c 293 s 2 are each amended to read as follows:

Authorized uses of proceeds from the sale of bonds authorized in RCW 47.02.120 through 47.02.190 include but are not limited to repayment to the motor vehicle fund ~~((for the loan from the motor vehicle fund to the transportation capital facilities account in the motor vehicle fund provided in the supplemental transportation budget))~~ for the initial financing of the headquarters facilities.

Sec. 12. RCW 47.02.150 and 1990 c 293 s 4 are each amended to read as follows:

The proceeds from the sale of bonds authorized by RCW 47.02.120 through 47.02.190 shall be available only for the purposes enumerated in RCW 47.02.120 and 47.02.130; for the payment of bond anticipation notes, if any; and for the payment of bond issuance costs, including the costs of underwriting. Proceeds ~~((required to repay the motor vehicle fund loan))~~ shall be deposited in the motor vehicle fund ~~((and remaining proceeds shall be deposited in the transportation capital facilities account))~~.

Sec. 13. RCW 47.10.801 and 1994 c 173 s 1 are each 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), (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))~~ for the purposes enumerated in subsection (1)(c) of this section.

Sec. 14. RCW 47.10.803 and 1986 c 290 s 2 are each amended to read as follows:

The proceeds from the sale of the bonds authorized by RCW 47.10.801(1) ~~(((a) and (b)))~~ shall be deposited in the motor vehicle fund. ~~(((The proceeds from the sale of the bonds authorized by RCW 47.10.801(1)(c) shall be deposited in the economic development account of the motor vehicle fund, hereby created.)))~~ All such proceeds shall be available only for the purposes enumerated in RCW 47.10.801, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds.

Sec. 15. RCW 47.12.125 and 1991 c 291 s 3 are each amended to read as follows:

All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the department's advance right of way revolving fund, except moneys that are subject to federal aid reimbursement and moneys received from rental of capital facilities properties, which shall be deposited in the motor vehicle fund ~~((, and except that moneys received from rental of capital facilities properties shall be deposited in the transportation capital facilities account as defined in chapter 47.13 RCW))~~.

Sec. 16. RCW 47.26.080 and 1994 c 179 s 8 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 city hardship assistance program, as provided in RCW 47.26.164, and the small city program, as provided in RCW 47.26.115, are implemented within the urban arterial trust account.

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.

Sec. 17. RCW 47.26.084 and 1994 c 179 s 10 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 five thousand and over, and to transportation benefit districts. Improvement projects may include, but are not limited to, multi-agency projects and 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.)) 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.~~

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 for street improvement projects in a manner determined by the board.))~~

Sec. 18. RCW 47.26.115 and 1994 c 179 s 9 are each amended 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))~~ program.

Sec. 19. RCW 47.26.140 and 1996 c 49 s 2 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, central Puget Sound public transportation account;))~~ public transportation systems account, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation.

Sec. 20. RCW 47.26.164 and 1991 c 342 s 60 are each amended to read as follows:

The board shall adopt reasonable rules necessary to implement the city hardship assistance program as recommended by the road jurisdiction study.

The following criteria shall be used to implement the program:

(1) Only those cities with a net gain in cost responsibility due to jurisdictional transfers in chapter 342, Laws of 1991, as determined by the board, may participate;

(2) Cities with populations of fifteen thousand or less, as determined by the office of financial management, may participate;

(3) The board shall develop criteria and procedures under which eligible cities may request funding for rehabilitation projects on city streets acquired under chapter 342, Laws of 1991; and

(4) The board shall also be authorized to allocate funds from the city hardship ~~((account))~~ assistance program to cities with a population under twenty thousand to offset extraordinary costs associated with the transfer of roadways other than pursuant to chapter 342, Laws of 1991, that occur after January 1, 1991.

Sec. 21. RCW 47.26.425 and 1994 c 179 s 22 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. 22. RCW 47.26.4252 and 1995 c 274 s 12 are each amended to read as follows:

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall 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 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. 23. RCW 47.26.4254 and 1995 c 274 s 13 are each amended to read as follows:

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall 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 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 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(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. 24. RCW 47.26.505 and 1994 c 179 s 29 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. 25. RCW 47.56.772 and 1993 c 4 s 4 are each amended to read as follows:

Upon the issuance of refunding bonds as authorized by RCW 47.56.770, the department of transportation may liquidate the existing bond fund and other funds and accounts established in the proceedings which authorized the issuance of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds and apply the money contained in those funds and accounts to the defeasance and redemption of outstanding toll bridge authority, ferry, and Hood Canal refunding revenue bonds, except that prior to such bond redemption, money

sufficient to pay the first interest installment on the refunding bonds shall be deposited in the ferry bond retirement fund. Money remaining in such funds not used for such bond defeasance and redemption or first interest installment on the refunding bonds shall be transferred to and deposited in the ~~((marine operating fund under RCW 47.56.775))~~ Puget Sound ferry operations account created under RCW 47.60.530.

Sec. 26. RCW 47.60.150 and 1990 c 42 s 405 are each amended to read as follows:

Subject to the provisions of RCW 47.60.326, the schedule of charges for the services and facilities of the system shall be fixed and revised from time to time by the commission so that the tolls and other revenues ~~((collected together with any moneys))~~ deposited in the Puget Sound ferry operations account ~~((transferred to the ferry system revolving account))~~ for maintenance and operation, and all moneys in the Puget Sound capital construction account available for debt service will yield annual revenue and income sufficient, after allowance for all operating, maintenance, and repair expenses to pay the interest and principal and sinking fund charges for all outstanding revenue bonds, and to create and maintain a fund for ordinary renewals and replacements: PROVIDED, That if provision is made by any resolution for the issuance of revenue bonds for the creation and maintenance of a special fund for rehabilitating, rebuilding, enlarging, or improving all or any part of the ferry system then such schedule of tolls and rates of charges shall be fixed and revised so that the revenue and income will also be sufficient to comply with such provision.

All income and revenues as collected shall be paid to the state treasurer for the account of the department ~~((as a separate trust fund and to be segregated and disbursed upon order of the department: PROVIDED, That the fund so segregated and set apart for the payment of the revenue bonds may be remitted to and held by a designated trustee in such manner and with such collateral as may be provided in the resolution authorizing the issuance of said bonds. No expenditure may be made from the revenue fund established under this section and the bond resolution without an appropriation by law))~~ and deposited into the Puget Sound ferry operations account. Nothing in this section requires tolls on the Hood Canal bridge except as may be required by any bond covenants.

Sec. 27. RCW 47.60.326 and 1990 c 42 s 406 are each amended to read as follows:

(1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Washington state ferries, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule,

in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

(a) The amount of subsidy available to the ferry system for maintenance and operation;

(b) The time and distance of ferry runs;

(c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;

(d) The efficient distribution of traffic between cross-sound routes;

(e) The desirability of reasonable commutation rates for persons using the ferry system to commute daily to work;

(f) The effect of proposed fares in increasing walk-on and vehicular passenger use;

(g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;

(h) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected ~~((to))~~ revenues from the ~~((ferry system, together with the transfer from the))~~ Puget Sound ferry operations account ~~((to the ferry system revolving account))~~ and any other operating subsidy available to the Washington state ferries~~((;))~~ will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section.

Sec. 28. RCW 47.60.440 and 1990 c 42 s 408 are each amended to read as follows:

The Washington state ferry system shall be efficiently managed, operated, and maintained as a revenue-producing undertaking. Subject to the provisions of RCW 47.60.326 the commission shall maintain and revise from time to time as necessary a schedule of tolls and charges on said ferry system ~~((and, if necessary to comply with bond covenants, on the Hood Canal bridge which together))~~ with ~~((any))~~ other

moneys deposited in the Puget Sound ferry operations account (~~((transferred to the ferry system revolving account))~~) for maintenance and operation and all moneys in the Puget Sound capital construction account available for debt service will produce net revenue available for debt service, in each fiscal year, in an amount at least equal to minimum annual debt service requirements as hereinafter provided. Minimum annual debt service requirements as used in this section shall include required payments of principal and interest, sinking fund requirements, and payments into reserves on all outstanding revenue bonds authorized by RCW 47.60.400 through 47.60.470.

The provisions of law relating to the revision of tolls and charges to meet minimum annual debt service requirements from net revenues as required by this section shall be binding upon the commission but shall not be deemed to constitute a contract to that effect for the benefit of the holders of such bonds.

Sec. 29. RCW 82.36.025 and 1994 c 179 s 30 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.

Sec. 30. RCW 82.44.150 and 1998 c 321 s 6 are each amended to read as follows:

(1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by RCW 82.44.020(1) remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.030, from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020(2) and 82.44.030, from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department shall, from motor vehicle excise taxes deposited in the transportation fund under RCW 82.44.110, make the following deposits:

(a) To the high capacity transportation account created in RCW 47.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax within each county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders; except that in a case of a municipality located in a county that has a population of one hundred seventy-five thousand or more that does not have an interstate highway located within its borders, that sum shall be deposited in the passenger ferry account;

(b) To the ~~((central Puget Sound))~~ public transportation systems account created in RCW 82.44.180, for revenues distributed after June 30, 1999, within a county with a population of one million or more and a county with a population of from two hundred thousand to less than one million bordering a county with a population of one million or more with which it shares a border of more than five miles, a sum equal to ~~((the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(b) applies; however, any transfer under this subsection (2)(b) must be greater than zero))~~ 6.8688 percent of the special excise tax distributed under RCW 35.58.273; and

(c) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after June 30, 1999, within counties not described in (b) of this subsection, a sum equal to ~~((the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(c) applies; however, any transfer under this subsection (2)(c) must be greater than zero))~~ 1.0534 percent of the special excise tax levied and collected under RCW 35.58.273.

(3) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding (i) the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes;

and (ii) the sales and use tax equalization distributions provided under RCW 82.14.046; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter, excluding the sales and use tax equalization distributions provided under RCW 82.14.046.

(4) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (3) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year excluding the sales and use tax equalization distributions provided under RCW 82.14.046. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(5) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section and RCW 82.14.046 shall be remitted without legislative appropriation.

(6) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (3) of this section.

Sec. 31. RCW 82.44.180 and 1998 c 321 s 41 (Referendum Bill No. 49) are each amended to read as follows:

(1) The transportation fund is created in the state treasury. Revenues under RCW 82.44.110 and 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public

highways and that are not authorized under Article II, section 40 of the state Constitution.

~~(2) ((There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects within the region from which the funds are derived, solely for:~~

~~—(a) Planning;~~

~~—(b) Development of capital projects;~~

~~—(c) Development of high capacity transportation systems as defined in RCW 81.104.015;~~

~~—(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and~~

~~—(e) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources;~~

~~—(3)) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2) (b) and (c) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects submitted by the public transportation systems ((from which the funds are derived)) as defined by chapters 36.56, 36.57, and 36.57A RCW and RCW 35.84.060 and 81.112.030, and the Washington state ferry system, solely for:~~

~~(a) Planning;~~

~~(b) Development of capital projects;~~

~~(c) Development of high capacity transportation systems as defined in RCW 81.104.015;~~

~~(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;~~

~~(e) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and~~

~~(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.~~

NEW SECTION. Sec. 32. The following acts or parts of acts are each repealed:

(1) RCW 46.68.180 (Highway construction stabilization account—Established, purpose) and 1985 c 140 s 1;

(2) RCW 46.68.190 (Highway construction stabilization account—Deposits, transfers) and 1985 c 140 s 2; and

(3) RCW 46.68.200 (Highway construction stabilization account—Uses limited) and 1985 c 140 s 3.

NEW SECTION. Sec. 33. The following acts or parts of acts are each repealed:

(1) RCW 47.02.180 (District 1 headquarters bonds—Reimbursement of motor vehicle fund) and 1990 c 293 s 7;

(2) RCW 47.13.010 (Account created—Deposits and expenditures) and 1989 c 397 s 1;

(3) RCW 47.13.020 (Federal moneys) and 1995 c 271 s 1 & 1989 c 397 s 2;

(4) RCW 47.13.030 (Exclusion of certain facilities) and 1989 c 397 s 3;

(5) RCW 47.13.040 (Definition) and 1989 c 397 s 4; and

(6) RCW 47.13.900 (Effective date—1989 c 397) and 1989 c 397 s 6.

NEW SECTION. Sec. 34. RCW 47.56.775 (Marine operating fund created) and 1993 c 4 s 7 are each repealed.

NEW SECTION. Sec. 35. (1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000.

NEW SECTION. Sec. 36. Sections 2 and 3 of this act expire September 1, 2000.

NEW SECTION. Sec. 37. If House Bill No. 1053, or similar legislation ending distribution of revenue to the small city account and the city hardship assistance account, does not become law by July 1, 1999, this act is null and void.

Passed the Senate March 12, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 95

[Senate Bill 5648]

BUSINESSES FURNISHING LODGING—DEFINITION

AN ACT Relating to providing consistency in definitions regarding businesses furnishing lodging; and amending RCW 19.48.010.

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

Sec. 1. RCW 19.48.010 and 1929 c 216 s 1 are each amended to read as follows:

Any building held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations, whether with or without meals, or the

facilities for preparing the same, are furnished for hire to transient guests, in which ~~((fifteen))~~ three or more rooms are used for the accommodation of such guests, shall for the purposes of this chapter and chapter 60.64 RCW, or any amendment thereof, only, be defined to be a hotel, and whenever the word hotel shall occur in this chapter and chapter 60.64 RCW, or any amendment thereof, it shall be construed to mean a hotel as herein described.

Passed the Senate March 13, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 96

[Substitute Senate Bill 5495]

REGULAR PROPERTY TAX LEVIES

AN ACT Relating to regular property tax levies; and amending RCW 84.55.015.

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

Sec. 1. RCW 84.55.015 and 1979 ex.s. c 218 s 4 are each amended to read as follows:

If a taxing district has not levied ~~((in the three most recent years))~~ since 1985 and elects to restore a regular property tax levy subject to applicable statutory limitations then such first restored levy shall be set so that the regular property tax payable shall not exceed the amount which ~~((could have been lawfully levied in 1973))~~ was last levied, plus an additional dollar amount calculated by multiplying the increase in assessed value in the district since ~~((1973))~~ the last levy resulting from new construction and improvements to property by the property tax rate which is proposed to be restored, or the maximum amount which could be lawfully levied in the year such a restored levy is proposed.

Passed the Senate March 15, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 22, 1999.

Filed in Office of Secretary of State April 22, 1999.

CHAPTER 97

[House Bill 1027]

CRIMINAL JUSTICE TRAINING COMMISSION—MEMBERSHIP

AN ACT Relating to expanding the membership of the criminal justice training commission; and amending RCW 43.101.030 and 43.101.060.

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

Sec. 1. RCW 43.101.030 and 1981 c 132 s 3 are each amended to read as follows:

The commission shall consist of (~~twelve~~) fourteen members, who shall be selected as follows:

(1) The governor shall appoint two incumbent sheriffs and two incumbent chiefs of police.

(2) The governor shall appoint one officer at or below the level of first line supervisor from a county law enforcement agency and one officer at or below the level of first line supervisor from a municipal law enforcement agency. Each appointee under this subsection (2) shall have at least ten years experience as a law enforcement officer.

(3) The governor shall appoint one person employed in a county correctional system and one person employed in the state correctional system.

~~((3))~~ (4) The governor shall appoint one incumbent county prosecuting attorney or municipal attorney.

~~((4))~~ (5) The governor shall appoint one elected official of a local government.

~~((5))~~ (6) The governor shall appoint one private citizen.

~~((6))~~ (7) The three remaining members shall be:

(a) The attorney general;

(b) The special agent in charge of the Seattle office of the federal bureau of investigation; and

(c) The chief of the state patrol.

Sec. 2. RCW 43.101.060 and 1974 ex.s. c 94 s 6 are each amended to read as follows:

The commission shall elect a (~~chairman~~) chair and a vice (~~chairman~~) chair from among its members. (~~Six~~) Seven members of the commission shall constitute a quorum. The governor shall summon the commission to its first meeting.

Meetings may be called by the (~~chairman~~) chair and shall be called by him or her upon the written request of (~~five~~) six members.

Passed the House April 4, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 98

[Substitute House Bill 1041]

PUBLIC WORKS PROJECTS AUTHORIZED

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

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

NEW SECTION. Sec. I. 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) Alderwood Water District—domestic water project—cover existing reservoir, make structural improvements to conform with current seismic standards
..... \$3,420,060
- (2) Annapolis Water District—domestic water project—replace asbestos cement and lead joint cast iron mains with approximately 5,000 lineal feet of 8-inch water main, and 1,900 lineal feet of water service line \$524,250
- (3) City of Auburn—domestic water project—construct corrosion control facilities on Coal Creek Springs and Well #2 \$3,850,000
- (4) City of Buckley—domestic water project—replace approximately two miles of various sized transmission lines, and stabilization of slope adjacent to the pipeline. The method of stabilization will be based on engineering report and recommendations \$500,000
- (5) City of Burlington—sanitary sewer project—modification of wastewater treatment plant to include replacement of aging equipment, expand the effluent pump station, add ultraviolet-light effluent disinfection, anaerobic digestion of waste sludge, and an outfall pipe to the Skagit River \$556,875
- (6) City of Camas—sanitary sewer project—design and construct wastewater treatment plant improvements, including repair and replacement of main raw sewage lift station, construct headworks facility primary clarifiers, activated sludge basins, ultraviolet disinfection, laboratory, and modifications to the sludge handling facilities \$3,452,590
- (7) Chelan River Irrigation District—domestic water project—construct new domestic water system including 17,900 lineal feet of 8-inch diameter distribution main, service connections, meters, a 200-gpm duplex booster pump station, and a 117,000 gallon reservoir \$1,553,989
- (8) Clark Public Utilities—domestic water project—improve five water storage tanks. Improvements include safety improvements, interior and exterior lining, coating, patching, ladders, inspection, and testing \$387,485
- (9) Cowlitz County—sanitary sewer project—improve regional collection system, pump station, force mains, central wastewater treatment plant, and solids stream work \$7,000,000
- (10) City of Des Moines—storm sewer project—replace Marine View Drive Bridge and Culvert \$2,349,500
- (11) City of DuPont—sanitary sewer project—replace deteriorated water and sewer systems, including lines, booster pumps, relocation of the water distribution system, and possible connection of the sanitary sewer system to Pierce County's system \$1,451,968
- (12) City of Federal Way—storm sewer project—improve Sea-Tac Mall Area Drainage System. Improvements will include storage system, water quality treatment, and conveyance system \$2,750,000

- (13) City of Goldendale—domestic water project—replace water source with a well, fence watershed and install over 16,000 lineal feet of water line to storage facility \$1,213,000
- (14) City of Grandview—domestic water project—replace four shallow wells with three new deep aquifer wells, including video inspections, testing, new pumps, pumphouses with security, appurtenances, piping, and chlorination equipment and controls \$539,000
- (15) City of Kettle Falls—domestic water project—construct a two-million gallon reservoir, install 2,000 lineal feet of 18-inch transmission main, and acquire a new auxiliary power generator \$1,651,539
- (16) King County Water District #111—domestic water project—construct piping, pump stations, meters, and source facilities for the water supply intertie between the City of Auburn, King County Water District #111, and Covington Water District \$1,850,613
- (17) King County Water District No. 54—domestic water project—design and construct a ground-level 650,000-gallon water reservoir, drill new well, and water pumping and transmission facilities to lift water from reservoir to 250,000-gallon spheroid \$1,116,240
- (18) Kitsap County Sewer District No. 5—sanitary sewer project—replace approximately 4,800 lineal feet of 8-inch sewer main and 4,750 lineal feet of 4-inch side sewer \$1,119,600
- (19) Kitsap County Sewer District No. 5—sanitary sewer project—upgrade Port Orchard pump station with replacement of approximately 1,650 lineal feet of sewer force main \$1,117,350
- (20) City of Lacey—road project—construct a one-way couplet, which includes class II bicycle facilities, bus shelters, extension of Lacey Boulevard from Golf Club Road across Burlington Northern Railroad, connecting to Pacific Avenue near Selma Street, appropriate signals, overlay, and restriping \$1,610,000
- (21) City of Leavenworth—sanitary sewer project—construct a regional cocomposting facility in Chelan County to stabilize sewage sludge generated at wastewater treatment plants throughout the county \$735,461
- (22) City of Moxee—sanitary sewer project—upgrade the city's wastewater treatment facility by installing disinfection system improvements, an effluent composite sampler, replacing clarifier mechanism, add sludge-drying beds, and a lift station pump to the headworks \$439,650
- (23) Town of Naches—sanitary sewer project—improve wastewater system by installing influent and effluent samplers, replace and reconfigure oxidation ditch effluent pumps, add sludge-drying beds, and replace bar screens . . . \$535,500
- (24) North Perry Avenue Water District—domestic water project—install 6, 8, and 12-inch water mains in pressure zones 315 and 345, and construct a booster pump system in pressure zone 490 \$1,070,757
- (25) City of Palouse—domestic water project—drilling and completing a 500-foot ground water for use as an emergency backup well. Also includes approximately

- 600 feet of 8-inch C900 PVC force main, an access road to the well house, replacement of approximately 1,000 lineal feet of 4-inch water line with 8-inch C900 PVC water, and a liquid sodium hypochlorite disinfection system
..... \$237,899
- (26) City of Pateros—sanitary sewer project—replace existing sewer treatment plant, which will include headworks, aeration basin and clarifier, upgrade of existing disinfection system, replacement of existing sludge dewatering facilities, and plant electrical upgrade \$505,000
- (27) City of Port Townsend—sanitary sewer project—replace approximately 7,800 lineal feet of an existing 18-inch trunk sewer line and approximately 1,400 lineal feet of 15-inch trunk sewer line with new 30-inch and 18-inch sewer lines and replacement of the Gaines Street Lift Station \$1,593,739
- (28) PUD No. 1 of Chelan County—domestic water project—construct a new booster pump station with the 1096 Pressure Zone to pump up to the 1395 Pressure Zone \$608,400
- (29) City of Pullman—domestic water project—construct a domestic water well located in the north intermediate Pressure Zone of the city \$622,534
- (30) City of Rock Island—domestic water project—construction of a new 4-million gallon steel reservoir, which consists of site grading and development, installation of a welded steel reservoir, connection to the city transmission system, and telemetry system for Wells #2 and #3 \$492,800
- (31) Scatchet Head Water District—domestic water project—install an ozone treatment plant to eliminate bacteriological contamination and remove iron and manganese from the water. Also, add a dedicated well supply line and new booster pump station to the Guemes Avenue standpipe \$365,640
- (32) City of Selah—sanitary sewer project—replace the chlorine disinfection system with an ultraviolet process, install a belt filter press, and construct a pretreatment clarifier \$2,261,000
- (33) Silver Lake Water District—domestic water project—provide a new point of water delivery and necessary facilities to the Silver Lake Water District. Project would add a new 8.5-mile transmission pipeline of 42-inch diameter, pump station with a capacity of 45.6 mgd to divert water from the existing Everett pipeline #5, a new 24-million gallon reservoir, and new water mains \$6,208,160
- (34) City of South Bend—domestic water project—replace water treatment system with a membrane filtration plant. Project includes installation of two membrane filtration treatment "mega modules," piping modifications, installation of controls and telemetry, standby generator, safety equipment, site work, and a new building \$889,700
- (35) PUD No. 1 of Stevens County—domestic water project—replace the current Stone Lodge water system, with 7,900 lineal feet of 6-inch water pipe, install twenty-eight water meters, four 6-inch fire hydrants, replace forty-six 1-inch service connections, and eliminate five dead-end lines \$130,550

(36) Terrace Heights Sewer District—sanitary sewer project—upgrade pipe connecting the district to the City of Yakima Regional Wastewater treatment facility, with approximately 8,000 lineal feet of concrete sewer main \$610,470

(37) Vashon Sewer District—sanitary sewer project—rehabilitate and construct improvements to wastewater treatment facility. Project includes the replacement of existing oxidation ditch with sequencing batch reactors, construction of an ultraviolet disinfection system, a 20,000 gallon sludge storage tank, and an equipment building to house the sludge press with related equipment and storage for dewatered sludge \$2,150,000

(38) City of Walla Walla—sanitary sewer project—rehabilitation of city's wastewater treatment plant. Project consists of improvements to filtration plant, biosolids handling equipment, and reclamation improvements \$7,000,000

(39) Willapa Valley Water District—domestic water project—install new filtration plant and alterations to other related systems \$420,000

(40) City of Woodland—sanitary sewer project—install variable speed drives, primary and secondary clarifiers, replacement of the existing disinfection system, digesters, biosolids handling equipment, and other ancillary improvements \$4,271,760

(41) Yakima County—bridge project—project consists of design, right of way acquisition, demolition, and reconstruction of 18 bridges on county roads that span from 25 feet to 150 feet in length, including roadway approaches, guardrails, drainage facilities, and other miscellaneous items relative to the project \$5,000,000

(42) Yakima County—road project—project includes design right of way acquisition, reconstruction, and paving of gravel roads throughout the county, this includes asphalt and concrete paving, curbs, gutters, sidewalks, drainage facilities, traffic control signs, irrigation crossings, illumination, excavation, embankments, and other miscellaneous items relative to the project \$2,000,000

Total \$76,163,079

NEW SECTION. Sec. 2. The sum of twenty-six million five hundred twenty-one thousand six hundred eighty-eight dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 2001, from the public works assistance account to the department of community, trade, and economic development for project loans recommended by the public works board and previously approved by the legislature.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House February 22, 1999.
Passed the Senate April 8, 1999.
Approved by the Governor April 23, 1999.
Filed in Office of Secretary of State April 23, 1999.

CHAPTER 99

[House Bill 1073]

PUBLIC HOSPITAL DISTRICTS—ALTERNATIVE BID PROCEDURES

AN ACT Relating to alternative bid procedures for public hospital districts; and amending RCW 70.44.140.

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

Sec. 1. RCW 70.44.140 and 1998 c 278 s 9 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: **PROVIDED, HOWEVER,** That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: **PROVIDED, HOWEVER,** That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond

within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) In lieu of the procedures of subsection (1) of this section, a public hospital district may use the ~~((small works roster process))~~ contracting processes provided in RCW 39.04.155 ~~((and award public works contracts))~~; however, public hospital districts may only use the small works roster process for projects ((with an) estimated ((value in excess of)) to cost less than fifty thousand dollars.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Passed the House March 4, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 100

[Substitute House Bill 1133]

VOTER REGISTRATION LISTS

AN ACT Relating to periodically maintaining voter registration lists; amending RCW 29.10.090, 29.10.180, and 29.10.040; and adding new sections to chapter 29.10 RCW.

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

Sec. 1. RCW 29.10.090 and 1994 c 57 s 41 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.))~~

In addition to case-by-case maintenance under RCW 29.10.071 and 29.10.075 and the general program of maintenance of voter registration lists under RCW 29.10.180, deceased voters will be canceled from voter registration lists as follows:

(1) Every month, the registrar of vital statistics of the state shall prepare a separate list of persons who resided in each county, for whom a death certificate was transmitted to the registrar and was not included on a previous list, and shall supply ((such monthly lists for each county of the state, exclusive of cities of the first class,)) the appropriate list to ((the)) each county auditor ((thereof)).

~~((The))~~ A county ~~((auditors))~~ auditor shall compare ~~((such lists))~~ this list with the registration records and cancel the registrations of deceased voters within at

least forty-five days before the next primary or election held in the county after the auditor receives the list.

(2) In addition, 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.

(3) In addition (~~(to the above manner 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 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.

Sec. 2. RCW 29.10.180 and 1994 c 57 s 44 are each amended to read as follows:

In addition to the case-by-case maintenance required under RCW 29.10.071 and 29.10.075 and the canceling of registrations under RCW 29.10.090, the county auditor shall establish a general program of voter registration list maintenance. This program must be a thorough review that is applied uniformly throughout the county and must be nondiscriminatory in its application. Any program established must be completed at least once every two years and 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 receives change of address information from the United States postal service that indicates that a voter has changed his or her residence address within the county, the auditor shall transfer the registration of that voter and send ~~((an acknowledgment))~~ a confirmation notice informing the voter 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) A direct, nonforwardable, nonprofit or first-class~~(-return if undeliverable, address correction requested-)~~ mailing to every registered voter within the county bearing the postal endorsement "Return Service Requested." 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.

Sec. 3. RCW 29.10.040 and 1994 c 57 s 36 are each amended to read as follows:

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)) An authorization ((shall)) to cancel a voter's registration must 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.

NEW SECTION. **Sec. 4.** A new section is added to chapter 29.10 RCW to read as follows:

In addition to the case-by-case cancellation procedure required in RCW 29.10.040, the county auditor, in conjunction with the office of the secretary of state, shall participate in an annual list maintenance program designed to detect persons registered in more than one county. This program must be applied uniformly throughout the county and must be nondiscriminatory in its application. The program must be completed not later than thirty days before the date of a primary or general election.

The office of the secretary of state shall cause to be created a list of registered voters with the same date of birth and similar names who appear on two or more county lists of registered voters. The office of the secretary of state shall forward this list to each county auditor so that they may properly cancel the previous registration of voters who have subsequently registered in a different county. 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 and the signature provided to the new county on the voter's new registration were made by the same person. The office of the secretary of state shall adopt rules to facilitate this process.

NEW SECTION. **Sec. 5.** A new section is added to chapter 29.10 RCW to read as follows:

The secretary of state shall create a standard electronic file format (state transfer form) to be used for the transfer of voter registration information between county auditors and the office of the secretary of state. The format must be

prescribed by rule and contain at least the following information: Voter name, address, date of birth, date of registration, mailing address, legislative and congressional district, and digitized signature image. Each county shall program its voter registration system to convert this data from the county's storage format into the state transfer format. Every county shall complete this work by January 1, 2000. Each county may bill reasonable programming costs incurred by it to the office of the secretary of state by June 1, 2000.

Passed the House March 12, 1999.

Passed the Senate April 9, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 101

[House Bill 1819]

PROCEDURES FOR CHANGING THE NAMES OF SCHOOL DISTRICTS

AN ACT Relating to procedures for changing the names of school districts; adding a new section to chapter 28A.320 RCW; and repealing RCW 28A.315.690, 28A.315.700, 28A.315.710, and 28A.315.720.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) The board of directors may change the name of the school district if:

(a) Either ten percent of the registered voters of the district file a petition requesting that the name of the school district be changed and submit the proposed new name with the request to the board or the board passes a motion to hold a hearing to change the school district name;

(b) After receiving the petition or adopting the motion, the board holds a hearing within one month after the petition was submitted to the board. The board shall publish notice of the hearing and the proposed new name once a week for three consecutive weeks in a newspaper of general circulation within the school district. At the hearing, other names may be proposed and considered by the board without additional notice requirements; and

(c) A majority of the board votes to adopt the new name.

(2) If the board adopts the new name, the new name shall be recorded in the school district office and with the educational service district superintendent, the superintendent of public instruction, the state board of education, and the secretary of state.

NEW SECTION. **Sec. 2.** The following acts or parts of acts are each repealed:

(1) RCW 28A.315.690 (Change of district name—Authorized—Petition for) and 1969 ex.s. c 223 s 28A.58.600;

(2) RCW 28A.315.700 (Change of district name—Public hearing on—Notice of—Hearing may include additional petitions) and 1969 ex.s. c 223 s 28A.58.601;

(3) RCW 28A.315.710 (Change of district name—Board selection of name for voter approval) and 1969 ex.s. c 223 s 28A.58.602; and

(4) RCW 28A.315.720 (Change of district name—Procedure upon voter approval—Recording—Notice to interested institutions) and 1975 1st ex.s. c 275 s 114, 1971 c 48 s 32, & 1969 ex.s. c 223 s 28A.58.603.

Passed the House March 8, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 102

[House Bill 1413]

COMMISSION ON SALARIES FOR ELECTED OFFICIALS—TERMS OF MEMBERS

AN ACT Relating to the terms of members of the Washington citizens' commission on salaries for elected officials; and amending RCW 43.03.305.

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

Sec. 1. RCW 43.03.305 and 1995 c 3 s 1 are each amended to read as follows:

There is created a commission to be known as the Washington citizens' commission on salaries for elected officials, to consist of sixteen members appointed by the governor as provided in this section.

(1) Nine of the sixteen commission members shall be selected by lot by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under subsection (3) of this section. One member shall be selected from each congressional district. The secretary shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a congressional district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(2) The remaining seven of the sixteen commission members, all residents of this state, shall be selected jointly by the speaker of the house of representatives and the president of the senate. The persons selected under this subsection shall have had experience in the field of personnel management. Of these seven members, one shall be selected from each of the following five sectors in this state: Private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the two remaining members, one shall be a person recommended to the speaker and the president by the chair of the Washington personnel resources board and one shall be a person

recommended by majority vote of the presidents of the state's four-year institutions of higher education.

(3) The secretary of state shall forward the names of persons selected under subsection (1) of this section and the speaker of the house of representatives and president of the senate shall forward the names of persons selected under subsection (2) of this section to the governor who shall appoint these persons to the commission. Except as provided in subsection (6) of this section, the names of persons selected for appointment to the commission shall be forwarded to the governor not later than February 15, 1987, and not later than the fifteenth day of February every four years ~~((thereafter))~~ through 1999. The terms of the members selected in 1999 shall terminate July 1, 2002, and the names of persons selected for appointment to the commission shall be forwarded to the governor not later than July 1, 2002. Of the sixteen names forwarded to the governor in 2002, the governor shall by lot select four of the persons selected under subsection (1) of this section and four of the persons selected under subsection (2) of this section to serve two-year terms, with the rest of the members serving four-year terms. Thereafter, except as provided in subsection (6) of this section, all members shall serve four-year terms and the names of eight persons selected for appointment to the commission shall be forwarded to the governor not later than the first day of July every two years.

(4) ~~((Members shall hold office for terms of four years, and))~~ No person may be appointed to more than two ((such)) terms. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

The unexcused absence of any person who is a member of the commission from two consecutive meetings of the commission shall constitute the relinquishment of that person's membership on the commission. Such a relinquishment creates a vacancy in that person's position on the commission. A member's absence may be excused by the chair of the commission upon the member's written request if the chair believes there is just cause for the absence. Such a request must be received by the chair before the meeting for which the absence is to be excused. A member's absence from a meeting of the commission may also be excused during the meeting for which the member is absent by the affirmative vote of a majority of the members of the commission present at the meeting.

(5) No state official, public employee, or lobbyist, or immediate family member of the official, employee, or lobbyist, subject to the registration requirements of chapter 42.17 RCW is eligible for membership on the commission.

As used in this subsection the phrase "immediate family" means the parents, spouse, siblings, children, or dependent relative of the official, employee, or lobbyist whether or not living in the household of the official, employee, or lobbyist.

(6) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as originally provided.

Passed the House March 9, 1999.

Passed the Senate April 9, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 103

[Substitute House Bill 1490]

DELIVERY OF SALMON TO STATE PORTS

AN ACT Relating to the delivery of salmon into the ports of the state; and adding a new section to chapter 75.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 75.28 RCW to read as follows:

(1) The legislature finds that landing salmon into the ports of Washington state, regardless of where such salmon have been harvested, is economically beneficial to those ports as well as to the citizens of the state of Washington. It is therefore the intent of the legislature to encourage this practice.

(2) Notwithstanding the provisions of RCW 75.28.010(1)(b) and 75.28.113, a Washington citizen who holds a valid Oregon or California salmon troll license may land salmon taken during lawful seasons in Oregon and California into Washington ports without obtaining a salmon delivery license. This exception is valid only when the salmon were taken in offshore waters south of Cape Falcon.

(3) The department shall adopt rules necessary to implement this section, including rules identifying the appropriate methods for verifying that salmon were in fact taken south of Cape Falcon.

Passed the House March 3, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 104

[Engrossed Substitute House Bill 1547]

LOCAL SALES AND USE TAX FOR ZOOS AND AQUARIUMS

AN ACT Relating to local retail sales and use tax for zoos and aquariums; adding a new section to chapter 82.14 RCW; adding a new section to chapter 36.29 RCW; and adding new sections to chapter 36.01 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.14 RCW to read as follows:

(1) Upon the joint request of a metropolitan park district and a city with a population of more than one hundred fifty thousand, a county legislative authority in a county with a population of more than five hundred thousand and less than one million may submit an authorizing proposition to the county voters, fixing and imposing a sales and use tax in accordance with this chapter for the purposes designated in subsection (3) of this section. Such proposition must be placed on a ballot for a special or general election to be held no later than one year after the date of the joint request.

(2) The proposition is approved if it receives the votes of a majority of those voting on the proposition.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal no more than one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(4) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, or improvement of zoo, aquarium, and wildlife preservation and display facilities that are currently accredited by the American zoo and aquarium association.

(5) The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

NEW SECTION. Sec. 2. A new section is added to chapter 36.29 RCW to read as follows:

The county treasurer or, in the case of a home rule county, the county official designated by county charter and ordinance as the official with custody over the collection of county-wide tax revenues, shall receive all money representing revenues from taxes authorized under section 1 of this act, and shall disburse such money to the authority established in section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 36.01 RCW to read as follows:

(1) Upon certification by the county auditor or, in the case of a home rule county, upon certification by the chief elections officer, that a proposition authorized under the terms of section 1 of this act has received a majority of votes cast on the proposition, the county legislative authority shall convene an initial meeting of the zoo and aquarium advisory authority.

(2) Consistent with any agreement between the local governments specified in section 1(1) of this act in requesting an election, the zoo and aquarium advisory authority has authority to expend such funds as it may receive on those purposes

set out in section 1(4) of this act. In addition, and consistent with any limitation placed on the powers of the authority in such an agreement, the zoo and aquarium advisory authority may exercise the following powers:

(a) Acquire by purchase, gift, or grant and lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of any zoo, aquarium, and wildlife preservation and display facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for those facilities;

(b) Contract with the United States or any agency thereof, any state or agency thereof, any metropolitan municipal corporation, any other county, city, special district, or governmental agency, and any private person, firm, or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of zoo, aquarium, and wildlife preservation and display facilities;

(c) Contract with any governmental agency or with a private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights-of-way of all kinds which are owned, leased, or held by the other party, and for the purpose of planning, constructing, or operating any facility or performing any service related to zoos, aquariums, and wildlife preservation and display facilities;

(d) Fix rates and charges for the use of those facilities;

(e) Sue and be sued in its corporate capacity in all courts and in all proceedings.

NEW SECTION. Sec. 4. A new section is added to chapter 36.01 RCW to read as follows:

(1) For any county in which a proposition authorized by section 1 of this act has been passed, there shall be created a zoo and aquarium advisory authority.

(2) The initial board of the authority shall be constituted as follows:

(a) Three members appointed by the county legislative authority to represent unincorporated areas;

(b) Two members appointed by the legislative authority of the city with the largest population within the county; and

(c) Two members jointly appointed by the legislative authorities of the remaining cities within the county representing at least sixty percent of the combined populations of those cities.

(3) Board members shall hold office for whatever terms are determined by their appointing authorities, except that no term may be less than one year nor more than three years, in duration. However, a vacancy may be filled by an appointment for a term less than twelve months in duration.

Passed the House March 16, 1999.
Passed the Senate April 9, 1999.
Approved by the Governor April 23, 1999.
Filed in Office of Secretary of State April 23, 1999.

CHAPTER 105

[House Bill 1584]

FIRE PROTECTION DISTRICTS—ANNEXATION OF TERRITORY

AN ACT Relating to fire protection districts; and amending RCW 52.04.011, 52.04.031, and 52.04.061.

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

Sec. 1. RCW 52.04.011 and 1989 c 63 s 8 are each amended to read as follows:

(1) A territory (~~contiguous~~) adjacent to a fire protection district and not within the boundaries of a city, town, or other fire protection district may be annexed to the fire protection district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such (~~contiguous~~) territory may be located in a county or counties other than the county or counties within which the fire protection district is located. The petition shall be filed with the fire commissioners of the fire protection district and if the fire commissioners concur in the petition they shall file the petition with the county auditor of the county within which the territory is located. If this territory is located in more than one county, the original petition shall be filed with the auditor of the county within which the largest portion of the territory is located, who shall be designated as the lead auditor, and a copy shall be filed with the auditor of each other county within which such territory is located. Within thirty days after the date of the filing of the petition the auditor shall examine the signatures on the petition and certify to the sufficiency or insufficiency of the signatures. If this territory is located in more than one county, the auditor of each other county who receives a copy of the petition shall examine the signatures and certify to the lead auditor the number of valid signatures and the number of registered voters residing in that portion of the territory that is located within the county. The lead auditor shall certify the sufficiency or insufficiency of the signatures.

After the county auditor has certified the sufficiency of the petition, the county legislative authority or authorities, or the boundary review board or boards, of the county or counties in which such territory is located shall consider the proposal under the same basis that a proposed incorporation of a fire protection district is considered, with the same authority to act on the proposal as in a proposed incorporation, as provided under chapter 52.02 RCW. If the proposed annexation is approved by the county legislative authority or boundary review board, the board of fire commissioners shall adopt a resolution requesting the county auditor to call a special election, as specified under RCW 29.13.020, at which the ballot proposition is to be submitted. No annexation shall occur when the territory

proposed to be annexed is located in more than one county unless the county legislative authority or boundary review board of each county approves the proposed annexation.

(2) The county legislative authority or authorities of the county or counties within which such territory is located have the authority and duty to determine on an equitable basis, the amount of any obligation which the territory to be annexed to the district shall assume to place the property owners of the existing district on a fair and equitable relationship with the property owners of the territory to be annexed as a result of the benefits of annexing to a district previously supported by the property owners of the existing district. If a boundary review board has had its jurisdiction invoked on the proposal and approves the proposal, the county legislative authority of the county within which such territory is located may exercise the authority granted in this subsection and require such an assumption of indebtedness. This obligation may be paid to the district in yearly benefit charge installments to be fixed by the county legislative authority. This benefit charge shall be collected with the annual tax levies against the property in the annexed territory until fully paid. The amount of the obligation and the plan of payment established by the county legislative authority shall be described in general terms in the notice of election for annexation and shall be described in the ballot proposition on the proposed annexation that is presented to the voters for their approval or rejection. Such benefit charge shall be limited to an amount not to exceed a total of fifty cents per thousand dollars of assessed valuation: PROVIDED, HOWEVER, That the special election on the proposed annexation shall be held only within the boundaries of the territory proposed to be annexed to the fire protection district.

(3) On the entry of the order of the county legislative authority incorporating the territory into the existing fire protection district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district. If the petition is signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and if the board of fire commissioners concur, an election in the territory and a hearing on the petition shall be dispensed with and the county legislative authority shall enter its order incorporating the territory into the existing fire protection district.

Sec. 2. RCW 52.04.031 and 1989 c 63 s 9 are each amended to read as follows:

A petition for annexation of an area (~~contiguous~~) adjacent to a fire district shall be in writing, addressed to and filed with the board of fire commissioners of the district to which annexation is desired. Such (~~contiguous~~) territory may be located in a county or counties other than the county or counties within which the fire protection district is located. It must be signed by the owners, according to the records of the county auditor or auditors, of not less than sixty percent of the area of land included in the annexation petition, shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the

property to be annexed. The petition shall state the financial obligation, if any, to be assumed by the area to be annexed.

Sec. 3. RCW 52.04.061 and 1985 c 313 s 1 are each amended to read as follows:

A city or town lying (~~contiguous~~) adjacent to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 100,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

Passed the House March 9, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 106

[Substitute House Bill 1653]

COMPETITIVE BID EXCEPTIONS

AN ACT Relating to the dollar limit under which competitive acquisition is not required; and amending RCW 43.19.1906.

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

Sec. 1. RCW 43.19.1906 and 1995 c 269 s 1404 are each amended to read as follows:

Insofar as practicable, all purchases and sales shall be based on competitive bids, and a formal sealed bid procedure shall be used as standard procedure for all purchases and contracts for purchases and sales executed by the state purchasing and material control director and under the powers granted by RCW 43.19.190 through 43.19.1939. This requirement also applies to purchases and contracts for purchases and sales executed by agencies, including educational institutions, under delegated authority granted in accordance with provisions of RCW 43.19.190 or under RCW 28B.10.029. However, formal sealed bidding is not necessary for:

(1) Emergency purchases made pursuant to RCW 43.19.200 if the sealed bidding procedure would prevent or hinder the emergency from being met appropriately;

(2) Purchases not exceeding thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management: **PROVIDED**, That the state director of general administration shall establish procedures to assure that purchases made by or on behalf of the various state agencies shall not be made so as to avoid the thirty-five thousand dollar bid limitation, or subsequent bid

limitations as calculated by the office of financial management: PROVIDED FURTHER, That the state purchasing and material control director is authorized to reduce the formal sealed bid limits of thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, to a lower dollar amount for purchases by individual state agencies if considered necessary to maintain full disclosure of competitive procurement or otherwise to achieve overall state efficiency and economy in purchasing and material control. Quotations from ~~((four hundred))~~ three thousand dollars to thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. The agency shall invite at least one quotation each from a certified minority and a certified women-owned vendor who shall otherwise qualify to perform such work. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry. A record of competition for all such purchases from ~~((four hundred))~~ three thousand dollars to thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be documented for audit purposes. Purchases up to ~~((four hundred))~~ three thousand dollars may be made without competitive bids based on buyer experience and knowledge of the market in achieving maximum quality at minimum cost ~~((: PROVIDED, That this four hundred dollar direct buy limit without competitive bids may be increased incrementally as required to a maximum of eight hundred dollars, if warranted by increases in purchasing costs due to inflationary trends))~~;

(3) 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;

(4) Purchases of insurance and bonds by the risk management office under RCW 43.19.1935;

(5) Purchases and contracts for vocational rehabilitation clients of the department of social and health services: PROVIDED, That this exemption is effective only when the state purchasing and material control director, after consultation with the director of the division of vocational rehabilitation and appropriate department of social and health services procurement personnel, declares that such purchases may be best executed through direct negotiation with one or more suppliers in order to expeditiously meet the special needs of the state's vocational rehabilitation clients;

(6) Purchases by universities for hospital operation or biomedical teaching or research purposes and by 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, made by participating in contracts for materials, supplies, and

equipment entered into by nonprofit cooperative hospital group purchasing organizations;

(7) Purchases by institutions of higher education not exceeding thirty-five thousand dollars: PROVIDED, That for purchases between ~~((two))~~ three thousand ~~((five hundred))~~ dollars and thirty-five thousand dollars quotations shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. For purchases between ~~((two))~~ three thousand ~~((five hundred))~~ dollars and thirty-five thousand dollars, each institution of higher education shall invite at least one quotation each from a certified minority and a certified women-owned vendor who shall otherwise qualify to perform such work. A record of competition for all such purchases made from ~~((two))~~ three thousand ~~((five hundred))~~ to thirty-five thousand dollars shall be documented for audit purposes; and

(8) Beginning on July 1, 1995, and on July 1 of each succeeding odd-numbered year, the dollar limits specified in this section shall be adjusted as follows: The office of financial management shall calculate such limits by adjusting the previous biennium's limits by the appropriate federal inflationary index reflecting the rate of inflation for the previous biennium. Such amounts shall be rounded to the nearest one hundred dollars. However, the three thousand dollar figure in subsections (2) and (7) of this section may not be adjusted to exceed five thousand dollars.

Passed the House March 12, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 107

[Substitute House Bill 1671]

PUBLIC WORKS CONTRACT ACTIONS—DOLLAR LIMITS

AN ACT Relating to actions arising out of public works contracts; and amending RCW 39.04.240.

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

Sec. 1. RCW 39.04.240 and 1992 c 171 s 1 are each amended to read as follows:

(1) The provisions of RCW 4.84.250 through 4.84.280 shall apply to an action arising out of a public works contract in which the state or a municipality, or other public body that contracts for public works, is a party, except that: (a) The maximum ~~((amount of the pleading shall be two hundred fifty thousand dollars))~~ dollar limitation in RCW 4.84.250 shall not apply; and (b) in applying RCW 4.84.280, the time period for serving offers of settlement on the adverse party shall be the period not less than thirty days and not more than one hundred twenty days after completion of the service and filing of the summons and complaint.

(2) The rights provided for under this section may not be waived by the parties to a public works contract that is entered into on or after June 11, 1992, and a provision in such a contract that provides for waiver of these rights is void as against public policy. However, this subsection shall not be construed as prohibiting the parties from mutually agreeing to a clause in a public works contract that requires submission of a dispute arising under the contract to arbitration.

Passed the House March 5, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 108

[Second Substitute House Bill 1686]

LOCAL ECONOMIC DEVELOPMENT COOPERATIVES

AN ACT Relating to local economic development cooperatives; amending RCW 43.63A.075; and adding a new section to chapter 43.330 RCW.

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

Sec. 1. RCW 43.63A.075 and 1993 c 280 s 59 are each amended to read as follows:

The department shall establish a community development finance program. Pursuant to this program, the department shall, in cooperation with the local economic development council: (1) Develop expertise in federal, state, and local community and economic development programs; and (2) assist communities and businesses to secure available financing. To the extent permitted by federal law, the department is encouraged to use federal community block grant funds to make urban development action grants to communities which have not been eligible to receive such grants prior to June 30, 1984.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.330 RCW to read as follows:

(1) There is established in the department a grant program to support business recruitment efforts. The purpose of the program is to assist local associate development organizations in business recruitment efforts by providing grants to assist in marketing the area to businesses on a national and international basis.

(2) Applications for funding under this section must:

(a) Be submitted by either a local associate development organization or a consortium of associate development organizations;

(b) Contain evidence of active participation in the development of the business recruitment effort between local governments, the community, and other local development organizations that serve the region;

(c) Contain a description of the proposed project and how it will assist the region in its business recruitment efforts; and

(d) Contain other information the director deems necessary.

(3) In making grants under this section, the department shall give preference to applications based on the following criteria:

(a) The degree of leverage of other funds, including in-kind match, committed to the project;

(b) The degree of community support for the proposed project; and

(c) The degree the proposed project is coordinated with existing state or local business recruitment efforts.

(4) The funding of an activity under this section is not an obligation of the state of Washington to provide ongoing funding in future years.

(5) The director may establish, by rule, such other requirements as the director may reasonably determine necessary and appropriate to assure that the purpose of this section is satisfied.

Passed the House March 15, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 109

[House Bill 1766]

BIDS ON PUBLIC WORKS

AN ACT Relating to bids on public works; and amending RCW 39.30.060.

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

Sec. 1. RCW 39.30.060 and 1995 c 94 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))~~ million dollars or more 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~~((;))~~ or 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 one hour after the published bid submittal time, the names of the subcontractors ~~((whose subcontract amount is more than ten percent of the bid price))~~ with whom the bidder, if awarded the contract, will subcontract for performance of the work ~~((designated on the list to be submitted with the bid))~~ of heating, ventilation and air conditioning, plumbing as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW, or to name itself for the work. The bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the bidder must indicate which subcontractor will be used for which alternate. Failure of the bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the bidder's

bid nonresponsive and, therefore, void. The requirement of this section to name the bidder's proposed heating, ventilation and air conditioning, plumbing, and electrical subcontractors applies only to proposed heating, ventilation and air conditioning, plumbing, and electrical subcontractors who will contract directly with the general contractor submitting the bid to the public entity.

Passed the House March 12, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 110

[Engrossed House Bill 1845]

VOCATIONAL REHABILITATION BENEFITS—EXPENDITURES ALLOWED

AN ACT Relating to the maximum expenditure allowed for vocational rehabilitation benefits under industrial insurance; reenacting and amending RCW 51.32.095; creating a new section; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 51.32.095 and 1996 c 151 s 1 and 1996 c 59 s 1 are each reenacted and amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation. ((Such))

(b) Beginning with vocational rehabilitation plans approved on or after the effective date of this section, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment(~~((PROVIDED, That such))~~). However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks(~~((PROVIDED FURTHER))~~), except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid. ((Said))

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a)

Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(7) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(8) Except as otherwise provided in this section, the benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes.

NEW SECTION. Sec. 2. The department of labor and industries shall conduct a cost-benefit analysis of the benefit increase authorized in RCW 51.32.095(3)(b). The analysis must include an examination of utilization of the benefit increase, including the number of claims in which vocational rehabilitation benefits are used more than once, and vocational results, including return-to-work and long-term wage replacement outcomes. The department shall report the results of the analysis to the workers' compensation advisory committee and the appropriate committees of the legislature by November 1, 2001.

NEW SECTION. Sec. 3. Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

Passed the House March 10, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 111

[House Bill 1996]

CHARTER BOAT SAFETY

AN ACT Relating to charter boat safety; and amending RCW 88.04.005, 88.04.015, 88.04.025, 88.04.035, 88.04.045, 88.04.065, 88.04.310, and 88.04.330.

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

Sec. 1. RCW 88.04.005 and 1989 c 295 s 1 are each amended to read as follows:

The purposes of this chapter are as follows:

(1) Regulate charter boats for the carrying of more than six passengers, which are operated on ~~((inland navigable))~~ state waters ~~((of the state))~~ and which are not regulated by the United States coast guard;

(2) Protect the safety and health of employees, passengers, and persons utilizing charter boats;

(3) Authorize the department of labor and industries to adopt rules regulating the use of charter boats operating on ~~((inland navigable))~~ state waters ~~((of the state))~~ and to issue licenses; and

(4) Provide penalties for violations of this chapter.

Sec. 2. RCW 88.04.015 and 1991 c 45 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 labor and industries.

(2) "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(3) "Charter boat" means a vessel or barge operating on ~~((inland navigable))~~ state waters ~~((of the state of Washington which))~~ that is not inspected or licensed by the United States coast guard and over which the United States coast guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

(4) "Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(5) ~~"((Inland navigable)) State waters"~~ State waters means all waters within the territorial limits of the state of Washington, ~~((shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, lakes, and other inland waters of the state))~~ and not subject to the jurisdiction of the United States coast guard.

(6) "Operate" means to start or operate any engine which propels a vessel, or to physically control the motion, direction, or speed of a vessel.

(7) "Owner" means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest in a vessel which entitles that person to possession of the vessel; but does not include charterers and lessees.

(8) "Passenger" means a person carried on board a charter boat except:

- (a) The owner of the vessel or the owner's agent; or
- (b) The captain and members of the vessel's crew.

(9) "Operator's license" means a vessel operator's license issued by the United States coast guard or department for the specified tonnage and ~~((route))~~ operational waters of the vessel.

(10) "Vessel" means every description of motorized watercraft, other than a bare-boat charter boat, seaplane, or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

(11) "Bare-boat charter" means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel.

Sec. 3. RCW 88.04.025 and 1989 c 295 s 3 are each amended to read as follows:

A person shall not rent, lease, or hire out a charter boat, nor carry, advertise for the carrying of, nor arrange for the carrying of, more than six passengers on a vessel for a fee or other consideration on ~~((the inland navigable))~~ state waters ~~((of the state))~~ unless each of the following conditions is satisfied:

(1)(a) The department has inspected the vessel within the previous twelve months and has issued for the vessel a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers; or

(b) The United States coast guard has inspected the vessel and has issued a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers.

(2) The operator of the vessel is licensed as an operator by either the United States coast guard or the department. The operator must carry such license at all times while operating the vessel and must display such license upon demand by the department.

(3) The vessel has a valid and current registration certificate which is available for inspection by the department.

(4) The vessel is covered by current and valid liability insurance. Proof of such coverage must be provided to the department upon demand.

Sec. 4. RCW 88.04.035 and 1989 c 295 s 4 are each amended to read as follows:

The department shall inspect or provide for the inspection of every charter boat once every twelve months with the vessel in the water ~~((, and once every twenty-four months with the vessel in dry dock,))~~ to determine if the vessel and its

equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations. Beginning no later than January 1, 2002, the department shall also inspect or provide for the inspection of every charter boat that carries more than six passengers once every sixty months with the vessel in drydock. In addition, the department may at any time inspect or provide for the inspection of any charter boat if the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property on the vessel.

(1) Ninety days before any certificate of inspection expires, the department shall mail written notification to the owner of the vessel that a twelve-month or (~~twenty-four-month~~) sixty-month inspection must be completed before the expiration date. The department shall include with the notification an application for inspection, which must be completed and returned by the owner no later than sixty days before the expiration date of the current certificate of inspection. The owner shall include the registration fee with the completed application form. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) If, after the inspection, the department determines that the charter boat and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall issue to the owner of the charter boat a certificate of inspection. Such certificate shall specify the maximum passenger, crew, and total person capacity of the charter boat. The certificate shall be valid for one year from the date of issuance. The certificate shall be prominently displayed on the charter boat while the charter boat is operating upon (~~the inland-navigable~~) state waters (~~of the state~~).

(3) The department shall determine the minimum number of crew necessary for the safe operation of the charter boat.

(4) If the department determines that the charter boat or its equipment does not comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall not issue a certificate of inspection and any current certificate of inspection shall be revoked by the department.

Sec. 5. RCW 88.04.045 and 1989 c 295 s 5 are each amended to read as follows:

(1) The owner of a vessel which does not have a current certificate of inspection or which has not previously been inspected by the department and which must be inspected by the department shall file an application for inspection, accompanied by the required fee, no later than sixty days before the scheduled or requested inspection date. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) ~~((If a charter boat has not been inspected during the twenty-four-month period prior to July 23, 1989, the owner shall pay to the department the inspection fee for inspection in the water and the inspection fee for inspection in drydock.~~

~~—(3))~~ When the department inspects or provides for the inspection of any charter boat because the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property, the owner shall not be required to pay an inspection fee for that inspection.

~~((4))~~ (3) When a twelve-month in-water inspection and a ~~((twenty-four-month))~~ sixty-month drydock inspection are required in the same year, the owner shall only be required to pay the fee for the drydock inspection.

~~((5))~~ (4) All sums received from licenses, inspection fees, or other sources described in this chapter shall be deposited in the industrial insurance trust funds and shall be used for administrative, education, and enforcement costs associated with this chapter.

Sec. 6. RCW 88.04.065 and 1989 c 295 s 10 are each amended to read as follows:

(1) The department may enter into reciprocal agreements with other states concerning the operation and inspection of charter boats from those states that operate on the ~~((inland navigable))~~ waters of the state of Washington. Reciprocity shall be granted only if a state can establish to the satisfaction of the department that their laws and standards concerning charter boats meet or exceed the laws and rules of the state of Washington. A charter boat that operates on ~~((the inland navigable))~~ state waters ~~((of this state))~~ under a reciprocal agreement pursuant to this section shall obtain an annual operating permit from the department for a fee for each year the charter boat does business on the waters of the state of Washington. The department shall deposit the fees from annual operating permits issued pursuant to this section in the industrial insurance trust funds.

(2) The department shall develop an education and enforcement program designed to eliminate the operation of charter boats that have not been inspected and certified as required by this chapter, and shall ~~((prepare printed materials to))~~ provide the public with information regarding the safety features and requirements necessary for the lawful operation of charter boats.

Sec. 7. RCW 88.04.310 and 1989 c 295 s 6 are each amended to read as follows:

The owner or operator of every vessel inspected by the department shall pay the department a fee for each inspection. The fee shall be established by rule and shall cover the full cost of the inspection program including travel, per diem, and administrative and legal support costs for the program ~~((and repayment to the state general fund by June 30, 1991, of the amount appropriated in section 15 of this act for the program))~~.

Sec. 8. RCW 88.04.330 and 1989 c 295 s 8 are each amended to read as follows:

~~((+))~~ The department shall adopt by rule, under chapter 34.05 RCW:

~~((a))~~ (1) Procedures, standards, and fees for the licensing of operators of any vessel used as a charter boat, as defined under RCW 88.04.015, operating on ~~((inland navigable))~~ state waters for rent, lease, or hire;

~~((b))~~ (2) Standards and fees for the inspection of vessels;

~~((c))~~ (3) Minimum safety and health standards for passengers and crew on board charter boats ~~((These rules shall approximate, where appropriate,))~~ consistent with the rules adopted by the United States coast guard in 46 C.F.R., subchapter T, small passenger vessels under one hundred gross tons; and

~~((d))~~ (4) Any other rules needed for the efficient administration of the purposes of this chapter.

~~((2) Rules adopted by the department shall use United States coast guard standards and precedents and be consistent with United States coast guard practices whenever possible.))~~

Passed the House March 11, 1999.

Passed the Senate April 7, 1999.

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Filed in Office of Secretary of State April 23, 1999.

CHAPTER 112

[House Bill 2052]

SERVICE CONTRACT REGULATION

AN ACT Relating to regulating service contracts; adding a new section to chapter 42.17 RCW; adding a new chapter to Title 48 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that increasing numbers of businesses are selling service contracts for repair, replacement, and maintenance of appliances, computers, electronic equipment, and other consumer products. There are risks that contract obligors will close or otherwise be unable to fulfill their contract obligations that could result in unnecessary and preventable losses to citizens of this state. The legislature declares that it is necessary to establish standards that will safeguard the public from possible losses arising from the cessation of business of service contract obligors or the mismanagement of funds paid for service contracts. The purpose of this chapter is to create a legal framework within which service contracts may be sold in this state and set forth requirements for conducting a service contract business.

NEW SECTION. Sec. 2. (1) The following are exempt from this title:

- (a) Warranties;
- (b) Maintenance agreements; and
- (c) Service contracts:

- (i) Paid for with separate and additional consideration;
 - (ii) Issued at the point of sale, or within sixty days of the original purchase date of the property; and
 - (iii) On tangible property when the tangible property for which the service contract is sold has a purchase price of fifty dollars or less, exclusive of sales tax.
- (2) This chapter does not apply to:
- (a) Vehicle service contracts which are governed under chapter 48.96 RCW; and
 - (b) Vehicle mechanical breakdown insurance.

NEW SECTION. Sec. 3. The definitions in this section apply throughout this chapter.

(1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means a person who buys any tangible personal property that is distributed in commerce.

(4) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(5) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(6) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(7) "Provider fee" means the consideration paid by a consumer for a service contract.

(8) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider to provide reimbursement to the service contract provider or to pay on behalf of the service contract provider all contractual obligations incurred by the service contract provider under the terms of the insured service contracts issued or sold by the service contract provider.

(9) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for indemnity payments for incidental damages to other property directly caused by the failure of the property which is the subject of the service contract, provided the indemnity payment per incident does not exceed the purchase price of the property that is the subject of the service contract.

(10) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(11) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(12) "Service contract seller" means the person who sells the service contract to the consumer.

(13) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

NEW SECTION. Sec. 4. (1) A person shall not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider shall make an application to the commissioner upon a form to be furnished by the commissioner. The application shall include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on section 6(2) (a) or (c) of this act to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company may be substituted for the audited financial statements of the service contract provider;

(d) An application fee of two hundred fifty dollars, which shall be deposited into the insurance commissioner's regulatory account under RCW 48.02.190; and

(e) Any other pertinent information required by the commissioner.

(3) The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the service contract provider or any

successor in interest, shall remain in effect as long as there is in force in this state any contract or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which shall be deposited into the insurance commissioner's regulatory account under RCW 48.02.190. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

NEW SECTION. Sec. 5. (1) Every registered service contract provider that is assuring its faithful performance of its obligations to its service contract holders by complying with section 6(2)(b) of this act shall file an annual report for the preceding calendar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report shall be in the form and contain those matters as the commissioner prescribes and shall be verified by at least two officers of the service contract provider.

(2) At the time of filing the report, the service contract provider shall pay a filing fee of twenty dollars which shall be deposited into the insurance commissioner's regulatory account under RCW 48.02.190.

(3) As part of any investigation by the commissioner, the commissioner may require a service contract provider to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements shall be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports shall be the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to

subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

NEW SECTION. Sec. 6. (1) Service contracts shall not be issued, sold, or offered for sale in this state or sold to consumers in this state unless the service contract provider has:

(a) Provided a receipt for, or other written evidence of, the purchase of the service contract to the contract holder; and

(b) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(2) In order to assure the faithful performance of a service contract provider's obligations to its service contract holders, every service contract provider shall be responsible for complying with the requirements of one of the following:

(a) Insure all service contracts under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner;

(b)(i) Maintain a funded reserve account for its obligations under its service contracts issued and outstanding in this state. The reserves shall not be less than forty percent of the gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the commissioner; and

(ii) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

(A) A surety bond issued by an insurer holding a certificate of authority from the commissioner;

(B) Securities of the type eligible for deposit by authorized insurers in this state;

(C) Cash;

(D) An evergreen letter of credit issued by a qualified financial institution; or

(E) Another form of security prescribed by rule by the commissioner; or

(c)(i) Maintain, or its parent company maintain, a net worth or stockholder's equity of at least one hundred million dollars; and

(ii) Upon request, provide the commissioner with a copy of the service contract provider's or the service contract provider's parent company's most recent form 10-K or form 20-F filed with the securities and exchange commission within the last calendar year, or if the company does not file with the securities and exchange commission, a copy of the service contract provider's or the service contract provider's parent company's audited financial statements, which shows a net worth of the service contract provider or its parent company of at least one hundred million dollars. If the service contract provider's parent company's form 10-K, form 20-F, or audited financial statements are filed with the commissioner to meet the service contract provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the service contract

provider relating to service contracts sold by the service contract provider in this state. A copy of the guarantee shall be filed with the commissioner. The guarantee shall be irrevocable as long as there is in force in this state any contract or any obligation arising from service contracts guaranteed, unless the parent company has made arrangements approved by the commissioner to satisfy its obligations under the guarantee.

(3) Service contracts shall require the service contract provider to permit the service contract holder to return the service contract within twenty days of the date the service contract was mailed to the service contract holder or within ten days of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under the service contract. Upon return of the service contract to the service contract provider within the applicable period, if no claim has been made under the service contract prior to the return to the service contract provider, the service contract is void and the service contract provider shall refund to the service contract holder, or credit the account of the service contract holder with the full purchase price of the service contract. The right to void the service contract provided in this subsection is not transferable and shall apply only to the original service contract purchaser. A ten percent penalty per month shall be added to a refund of the purchase price that is not paid or credited within thirty days after return of the service contract to the service contract provider.

(4) Except for service contract providers, persons marketing, selling, or offering to sell service contracts for providers are exempt from the registration requirements of section 4 of this act.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by service contract providers and related service contract sellers, administrators, and other persons complying with this chapter are exempt from the other provisions of this title, except chapter 48.04 RCW and as otherwise provided in this chapter.

NEW SECTION. **Sec. 7.** (1) Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state or sold to consumers in this state shall state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the service contract provider all sums the service contract provider is legally obligated to pay, including but not limited to the refund of the full purchase price of the service contract to the service contract holder or shall provide the service which the service contract provider is legally obligated to perform according to the service contract provider's contractual obligations under the service contracts issued or sold by the service contract provider.

(2) The reimbursement insurance policy shall fully insure the obligations of the service contract provider, rather than partially insure, or insure only in the event of service contract provider default.

(3) The reimbursement insurance policy shall state that the service contract holder is entitled to apply directly to the reimbursement insurance company.

NEW SECTION. Sec. 8. (1) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state or sold to residents of this state shall be written, printed, or typed in clear, understandable language that is easy to read, and disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy under sections 6(2)(a) and 7 of this act shall not be issued, sold, or offered for sale in this state or sold to residents of this state unless the service contract conspicuously contains a statement in substantially the following form: "Obligations of the service contract provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also conspicuously state the name and address of the issuer of the reimbursement policy and state that the service contract holder is entitled to apply directly to the reimbursement insurance company.

(3) Service contracts not insured under a reimbursement insurance policy under sections 6(2)(a) and 7 of this act shall contain a statement in substantially the following form: "Obligations of the service contract provider under this contract are backed by the full faith and credit of the service contract provider."

(4) Service contracts shall state the name and address of the service contract provider and shall identify any administrator if different from the service contract provider, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(5) Service contracts shall state the purchase price of the service contract and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale.

(6) Service contracts shall state the procedure to obtain service or to file a claim, including but not limited to the procedures for obtaining prior approval for repair work, the toll-free telephone number if prior approval is necessary for service, and the procedure for obtaining emergency repairs performed outside of normal business hours or provide for twenty-four-hour telephone assistance.

(7) Service contracts shall state the existence of any deductible amount, if applicable.

(8) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(9) Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.

(10) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration

date of the service contract by either the service contract provider or by the service contract holder, which rights can be no more restrictive than provided in section 6(3) of this act. The service contract provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the service contract provider at least twenty-one days prior to cancellation by the service contract provider. The notice shall state the effective date of the cancellation and the true and actual reason for the cancellation.

(11) Service contracts shall set forth the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage and any requirement to follow owner's manual instructions.

(12) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

(13) Service contracts shall not contain a provision which requires that any civil action brought in connection with the service contract must be brought in the courts of a jurisdiction other than this state. Service contracts that authorize binding arbitration to resolve claims or disputes may allow for arbitration proceedings to be held at a location in closest proximity to the service contract holder's permanent residence.

NEW SECTION. Sec. 9. (1) A service contract provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other service contract provider. This subsection does not apply to a company that was using any of the prohibited language in its name prior to January 1, 1999. However, a company using the prohibited language in its name shall conspicuously disclose in its service contracts the following statement: "This agreement is not an insurance contract."

(2) Every service contract provider shall conduct its business in its own legal name, unless the commissioner has approved the use of another name.

(3) A service contract provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(4) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

NEW SECTION. Sec. 10. (1) The service contract provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(2) The service contract provider's accounts, books, and records shall include the following:

(a) Copies of each type of service contract sold;

(b) The name and address of each service contract holder, to the extent that the name and address have been furnished by the service contract holder;

(c) A list of the locations where the service contracts are marketed, sold, or offered for sale; and

(d) Written claim files that contain at least the dates, amounts, and descriptions of claims related to the service contracts.

(3) Except as provided in subsection (5) of this section, the service contract provider shall retain all records required to be maintained by subsection (1) of this section for at least six years after the specified coverage has expired.

(4) The records required under this chapter may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy.

(5) A service contract provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

NEW SECTION. Sec. 11. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with RCW 48.18.290 has been given to the service contract provider and has been delivered to the commissioner. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for service contracts issued by service contract providers prior to the effective date of the termination.

NEW SECTION. Sec. 12. (1) Service contract providers are considered to be the agent of the insurer which issued the reimbursement insurance policy for purposes of obligating the insurer to service contract holders in accordance with the service contract and this chapter. Payment of the provider fee by the consumer to the service contract seller, service contract provider, or administrator constitutes payment by the consumer to the service contract provider and to the insurer which issued the reimbursement insurance policy. In cases where a service contract provider is acting as an administrator and enlists other service contract providers, the service contract provider acting as the administrator shall notify the insurer of the existence and identities of the other service contract providers.

(2) This act does not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a service contract provider if the issuer pays or is obligated to pay the service contract holder sums that the service contract provider was obligated to pay under the provisions of the service contract.

NEW SECTION. Sec. 13. (1) The commissioner may conduct investigations of service contract providers, administrators, service contract sellers, insurers, and other persons to enforce this chapter and protect service contract holders in this state. Upon request of the commissioner, the service contract provider shall make

all accounts, books, and records concerning service contracts sold by the service contract provider available to the commissioner which are necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

(2) The commissioner may take actions under RCW 48.02.080 or 48.04.050 which are necessary or appropriate to enforce this chapter and the commissioner's rules and orders, and to protect service contract holders in this state.

NEW SECTION. Sec. 14. (1) The commissioner may, subject to chapter 48.04 RCW, deny, suspend, or revoke the registration of a service contract provider if the commissioner finds that the service contract provider:

- (a) Has violated this chapter or the commissioner's rules and orders;
- (b) Has refused to be investigated or to produce its accounts, records, and files for investigation, or if any of its officers have refused to give information with respect to its affairs or refused to perform any other legal obligation as to an investigation, when required by the commissioner;
- (c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused service contract holders to accept less than the amount due them or caused service contract holders to employ attorneys or bring suit against the service contract provider to secure full payment or settlement of claims;
- (d) Is affiliated with or under the same general management or interlocking directorate or ownership as another service contract provider which unlawfully transacts business in this state without having a registration;
- (e) At any time fails to meet any qualification for which issuance of the registration could have been refused had such failure then existed and been known to the commissioner;
- (f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony;
- (g) Is under suspension or revocation in another state with respect to its service contract business;
- (h) Has made a material misstatement in its application for registration;
- (i) Has obtained or attempted to obtain a registration through misrepresentation or fraud;
- (j) Has, in the transaction of business under its registration, used fraudulent, coercive, or dishonest practices; or
- (k) Has failed to pay any judgment rendered against it in this state regarding a service contract within sixty days after the judgment has become final.

(2) The commissioner may, without advance notice or hearing thereon, immediately suspend the registration of a service contract provider if the commissioner finds that any of the following circumstances exist:

- (a) The provider is insolvent;
- (b) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the service contract provider has been commenced in any state; or

(c) The financial condition or business practices of the service contract provider otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) If the commissioner finds that grounds exist for the suspension or revocation of a registration issued under this chapter, the commissioner may, in lieu of suspension or revocation, impose a fine upon the service contract provider in an amount not more than two thousand dollars per violation.

NEW SECTION. Sec. 15. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition, as specifically contemplated by RCW 19.86.020, and is a violation of the consumer protection act, chapter 19.86 RCW. Any service contract holder injured as a result of a violation of a provision of this chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against the service contract provider and the insurer issuing the applicable service contract reimbursement policy and shall be entitled to all of the rights and remedies afforded by that chapter.

NEW SECTION. Sec. 16. The commissioner may adopt rules to implement and administer this chapter.

NEW SECTION. Sec. 17. This chapter applies to all service contracts sold or offered for sale ninety or more days after the effective date of this act.

NEW SECTION. Sec. 18. A new section is added to chapter 42.17 RCW to read as follows:

Information provided to the insurance commissioner under section 5(3) of this act is exempt from disclosure under this chapter.

NEW SECTION. Sec. 19. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 20. Sections 1 through 17 of this act constitute a new chapter in Title 48 RCW.

Passed the House March 9, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 113

[Substitute House Bill 2054]

RETAIL INSTALLMENT CONTRACT—CONTENTS

AN ACT Relating to the financing of goods by sellers of the goods; and amending RCW 63.14.010, 63.14.040, 63.14.110, and 63.14.130.

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

Sec. 1. RCW 63.14.010 and 1997 c 331 s 6 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United

States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys'

fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, or official fees;

(12) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, any vehicle dealer administrative fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period.

Sec. 2. RCW 63.14.040 and 1981 c 77 s 3 are each amended to read as follows:

(1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

~~((1))~~(a) The sale price of each item of goods or services;

~~((2))~~(b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;

~~((3))~~(c) The difference between items ~~((1))~~(a) and ~~((2))~~(b);

~~((4))~~(d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

~~((5))~~(e) The aggregate amount of official fees, if any;

~~((6))~~(f) The amount, if any, actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

~~(g)~~ The principal balance, which is the sum of items ~~((3))~~(c), ~~((4))~~(d) ~~(and (5))~~, (e), and (f);

~~((7)(g))~~ (h) The dollar amount or rate of the service charge;

~~((8)(h))~~ (i) The amount of the time balance owed by the buyer to the seller, which is the sum of items ~~((6)(f))~~ (g) and ~~((7)(g))~~ (h), if ~~((7)(g))~~ (h) is stated in a dollar amount; and

~~((9)(i))~~ (j) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed . . . % (must be filled in) per annum computed monthly.

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract.

Sec. 3. RCW 63.14.110 and 1967 c 234 s 6 are each amended to read as follows:

(1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to ~~((g))~~ (h) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to ~~((g))~~ (h) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase.

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: PROVIDED, That the seller may elect, where the amount of each

installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

Sec. 4. RCW 63.14.130 and 1997 c 331 s 7 are each amended to read as follows:

The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer, except for any vehicle dealer administrative fee under RCW 46.12.042.

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)((~~7~~)(~~g~~)) (h).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

Passed the House March 9, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 114

[House Bill 2205]

DUI ARREST—COURT APPEARANCE—TIME OF

AN ACT Relating to the mandatory court appearance following arrest for DUI; and amending RCW 46.61.50571.

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

Sec. 1. RCW 46.61.50571 and 1998 c 214 s 5 are each amended to read as follows:

(1) A defendant who is arrested for an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a magistrate within one judicial day after the arrest if the

defendant is served with a citation or complaint at the time of the arrest. A court may by local court rule waive the requirement for appearance within one judicial day if it provides for the appearance at the earliest practicable day following arrest and establishes the method for identifying that day in the rule.

(2) A defendant who is charged by citation, complaint, or information with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not arrested, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

Passed the House March 10, 1999.

Passed the Senate April 9, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 115

[Engrossed House Bill 2232]

OCCUPATIONAL SAFETY AND HEALTH IMPACT GRANTS

AN ACT Relating to occupational safety and health impact grants; adding new sections to chapter 49.17 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The director, in consultation with the WISHA advisory committee, shall establish a program to provide safety and health impact grants to prevent injuries and illnesses, save lives, and educate Washington employees and employers about workplace hazards and safe workplace practices. The intent of this act is to benefit, in the broadest sense possible, Washington workers and employers, especially those who are in small business and may lack the injury and illness prevention resources that larger companies may possess. The department may use appropriated industrial insurance funds to accomplish the purpose of this act. Funding for this program will be taken from the reserves of the medical aid fund which are in excess of actuarial needs.

(2) Using a competitive application process, the department shall award safety and health impact grants to trade associations, business associations, employers,

employee organizations, labor unions and groups of employees. The grants may include:

(a) Education and training grants to implement safety and health and to provide practical information, curricula, materials, and methods intended for use by employers and employees in reducing workplace hazards;

(b) Technical innovation grants to develop engineering and other technical solutions to injury and illness problems;

(c) Best practice grants for the application of hazard control; or

(d) State-wide priority grants to undertake innovative programs that address state-wide safety and health priorities established by the WISHA advisory committee.

(3) Applicants for grants may form partnerships with educational institutions and other organizations. Applicants for grants may form partnerships with self-insured employers if the product of the grant will significantly benefit employees and employers who belong to the state industrial insurance fund.

(4) Any materials, designs, or equipment developed under these grants will be in the public domain and may not be copyrighted or patented. Any materials or designs developed under these grants shall be provided to the department at no charge as a condition of grant receipt.

(5) Grants may not be used to support or develop specific legislative or regulatory initiatives.

(6) WISHA services may not use information contained in a grant application for inspection activity or to establish a recognized hazard for citation purposes.

NEW SECTION. **Sec. 2.** (1) The director shall appoint a safety and health impact grant review committee that will be a subcommittee of the WISHA advisory committee. The review committee is composed of nine members: Four members representing employees, each appointed from a list of at least three names per position, submitted by recognized state-wide organizations of employees; four members representing employers, each appointed from a list of at least three names per position, submitted by recognized state-wide organizations of employers; and, one ex officio member, without a vote, who shall represent the department. The committee chair shall be chosen by the review committee and shall alternate between business and labor. The committee members shall serve three-year renewable terms.

(2) Business and labor members of the safety and health impact grant review committee are entitled to expenses as provided under RCW 43.03.050 and 43.03.060.

(3) The safety and health impact grant review committee shall:

(a) Prepare requests for proposals;

(b) Receive, review, and process grant applications;

(c) Identify, by two-thirds majority vote, grant applications that merit funding and forward those applications to the director; and

(d) Identify, by two-thirds majority vote, funded grants that meet criteria for suspension or revocation and forward those grants to the director.

NEW SECTION. Sec. 3. (1) The safety and health impact grant review committee, in cooperation with the director, shall develop grant application procedures and approval criteria. The director shall ensure the proper administrative support to successfully monitor grant recipients for compliance with grant criteria and all other procedures under the grant program. The director in cooperation with the safety and health impact grant review committee shall implement procedures and criteria for grant approval, including procedures for suspension or revocation of grants to recipients failing to comply with grant criteria established under the authority of this section.

(2) The director shall approve only those grant applications and their recommended acceptance conditions as forwarded by the safety and health impact grant review committee, unless the director has a compelling and substantive reason to reject an application, whereupon the director shall provide written explanation for the denial to the review committee. The safety and health impact grant review committee shall review any grant applications rejected by the director and may advise the director to reconsider. The director shall consider the advice, if given, and shall approve the grant application with any conditions presented by the safety and health impact grant review committee. The director may reject that advice only for a compelling and substantive reason. If the director rejects that advice, the safety and health impact grant review committee may refer the application to the WISHA advisory committee. The WISHA advisory committee shall review the application and may advise the director to reconsider.

(3) The director may revoke or suspend an issued grant if advised by the safety and health impact grant review committee that the recipient is not in compliance with grant criteria or procedures. The director may suspend an issued grant without the advice of the safety and health impact grant review committee only for a compelling and substantive reason and the suspension recommendation shall be presented to the safety and health impact grant review committee for its consideration.

NEW SECTION. Sec. 4. The department and the safety and health impact grant review committee will present an annual review regarding the activities of the safety and health impact grant program to the WISHA advisory committee, the workers' compensation advisory committee, and make it available to the appropriate standing committees of the legislature. Based on a recommendation of the WISHA advisory committee, the workers' compensation advisory committee shall make a biennial recommendation to the director concerning an appropriate budget for the program.

NEW SECTION. Sec. 5. The director and representatives from the WISHA advisory committee shall perform a comprehensive review of the grant program

which shall include, but not be limited to, reported outcomes, injury reduction, and safety awareness and shall issue a report for the legislature by December 31, 2004.

NEW SECTION. Sec. 6. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2005:

- (1) Section 1 of this act;
- (2) Section 2 of this act;
- (3) Section 3 of this act;
- (4) Section 4 of this act; and
- (5) Section 5 of this act.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act are each added to chapter 49.17 RCW.

NEW SECTION. Sec. 8. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, this act is null and void.

Passed the House March 15, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 23, 1999.

Filed in Office of Secretary of State April 23, 1999.

CHAPTER 116

[Substitute Senate Bill 5729]

SOLID WASTE LANDFILLS—LOCATION

AN ACT Relating to standards for location of certain solid waste landfills; amending RCW 70.95.060; and declaring an emergency.

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

Sec. 1. RCW 70.95.060 and 1969 ex.s. c 134 s 6 are each amended to read as follows:

(1) The department ((in accordance with procedures prescribed by the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, may)) shall adopt ((such)) rules establishing minimum functional standards for solid waste handling ((as it deems appropriate)), consistent with the standards specified in this section. The department ((in adopting such standards)) may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards.

(2) In addition to the minimum functional standards adopted by the department under subsection (1) of this section, each landfill facility whose area at its design capacity will exceed one hundred acres and whose horizontal height at design capacity will average one hundred feet or more above existing site elevations shall comply with the standards of this subsection. This subsection applies only to wholly new solid waste landfill facilities, no part or unit of which has had construction commence before the effective date of this section.

(a) No landfill specified in this subsection may be located:

(i) So that the active area is closer than five miles to any national park or a public or private nonprofit zoological park displaying native animals in their native habitats; or

(ii) Over a sole source aquifer designated under the federal safe drinking water act, if such designation was effective before January 1, 1999.

(b) Each landfill specified in this subsection (2) shall be constructed with an impermeable berm around the entire perimeter of the active area of the landfill of such height, thickness, and design as will be sufficient to contain all material disposed in the event of a complete failure of the structural integrity of the landfill.

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

Passed the Senate March 17, 1999.

Passed the House April 25, 1999.

Approved by the Governor April 27, 1999.

Filed in Office of Secretary of State April 27, 1999.

CHAPTER 117

[Second Substitute Senate Bill 5102]

FIRE INSURANCE PREMIUM TAX—DISTRIBUTION

AN ACT Relating to distribution of the fire insurance premium tax to contribute toward the funding of fire fighting training and volunteer fire fighter pensions; and amending RCW 43.43.934, 43.43.944, 41.16.050, 41.24.170, 41.24.160, and 41.24.172.

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

Sec. 1. RCW 43.43.934 and 1998 c 245 s 65 are each amended to read as follows:

Except for matters relating to the statutory duties of the chief of the Washington state patrol that are to be carried out through the director of fire protection, the board shall have the responsibility of developing a comprehensive state policy regarding fire protection services. In carrying out its duties, the board shall:

(1)(a) Adopt a state fire training and education master plan that allows to the maximum feasible extent for negotiated agreements: (i) With the state board for community and technical colleges to provide academic, vocational, and field training programs for the fire service and (ii) with the higher education coordinating board and the state colleges and universities to provide instructional programs requiring advanced training, especially in command and management skills;

(b) Adopt minimum standards for each level of responsibility among personnel with fire suppression, prevention, inspection, and investigation responsibilities that assure continuing assessment of skills and are flexible enough

to meet emerging technologies. With particular respect to training for fire investigations, the master plan shall encourage cross training in appropriate law enforcement skills. To meet special local needs, fire agencies may adopt more stringent requirements than those adopted by the state;

(c) Cooperate with the common schools, technical and community colleges, institutions of higher education, and any department or division of the state, or of any county or municipal corporation in establishing and maintaining instruction in fire service training and education in accordance with any act of congress and legislation enacted by the legislature in pursuance thereof and in establishing, building, and operating training and education facilities.

Industrial fire departments and private fire investigators may participate in training and education programs under this chapter for a reasonable fee established by rule;

(d) Develop and adopt a master plan for constructing, equipping, maintaining, and operating necessary fire service training and education facilities subject to the provisions of chapter 43.19 RCW; ~~(and)~~

(e) Develop and adopt a master plan for the purchase, lease, or other acquisition of real estate necessary for fire service training and education facilities in a manner provided by law; and

(f) Develop and adopt a plan with a goal of providing training at the level of fire fighter one, as defined by the board, to all fire fighters in the state. The plan will include a reimbursement for fire protection districts and city fire departments of not less than two dollars for every hour of fire fighter one training. The Washington state patrol shall not provide reimbursement for more than one hundred fifty hours of fire fighter one training for each fire fighter trained.

(2) In addition to its responsibilities for fire service training, the board shall:

(a) Adopt a state fire protection master plan;

(b) Monitor fire protection in the state and develop objectives and priorities to improve fire protection for the state's citizens including: (i) The comprehensiveness of state and local inspections required by law for fire and life safety; (ii) the level of skills and training of inspectors, as well as needs for additional training; and (iii) the efforts of local, regional, and state inspection agencies to improve coordination and reduce duplication among inspection efforts;

(c) Establish and promote state arson control programs and ensure development of local arson control programs;

(d) Provide representation for local fire protection services to the governor in state-level fire protection planning matters such as, but not limited to, hazardous materials control;

(e) Recommend to the director of community, trade, and economic development rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service;

(f) Seek and solicit grants, gifts, bequests, devises, and matching funds for use in furthering the objectives and duties of the board, and establish procedures for administering them;

(g) Promote mutual aid and disaster planning for fire services in this state;

(h) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention; and

(i) Implement any legislation enacted by the legislature to meet the requirements of any acts of congress that apply to this section.

(3) In carrying out its statutory duties, the board shall give particular consideration to the appropriate roles to be played by the state and by local jurisdictions with fire protection responsibilities. Any determinations on the division of responsibility shall be made in consultation with local fire officials and their representatives.

To the extent possible, the board shall encourage development of regional units along compatible geographic, population, economic, and fire risk dimensions. Such regional units may serve to: (a) Reinforce coordination among state and local activities in fire service training, reporting, inspections, and investigations; (b) identify areas of special need, particularly in smaller jurisdictions with inadequate resources; (c) assist the state in its oversight responsibilities; (d) identify funding needs and options at both the state and local levels; and (e) provide models for building local capacity in fire protection programs.

Sec. 2. RCW 43.43.944 and 1995 c 369 s 21 are each amended to read as follows:

(1) The fire service training account is hereby established in the state treasury. The ~~(Washington state patrol shall deposit in the account)~~ fund shall consist of:

(a) All fees received by the Washington state patrol for fire service training;

(b) All grants and bequests accepted by the Washington state patrol under RCW 43.43.940; and

(c) Twenty percent of all moneys received by the state on fire insurance premiums.

(2) Moneys in the account may be appropriated only for fire service training.

Sec. 3. RCW 41.16.050 and 1994 c 273 s 23 are each amended to read as follows:

There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the firemen's pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments, or donations given or paid thereto; (2) ~~((forty-five))~~ twenty-five percent of all moneys received by the state from taxes on fire insurance premiums; (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by fire fighters as provided for herein. The moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid fire fighters in the city, town, or fire protection district bears to the total number of paid fire fighters throughout

the state to be ascertained in the following manner: The secretary of the firemen's pension board of each city, town, and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after June 7, 1961, and on or before the fifteenth day of January thereafter, certify to the state treasurer the number of paid fire fighters in the fire department in such city, town, or fire protection district. For any city or town annexed by a fire protection district at any time before, on, or after June 9, 1994, the city or town shall continue to certify to the state treasurer the number of paid fire fighters in the city or town fire department immediately before annexation until all obligations against the firemen's pension fund in the city or town have been satisfied. For the purposes of the calculation in this section, the state treasurer shall subtract the number certified by the annexed city or town from the number of paid fire fighters certified by an annexing fire protection district. The state treasurer shall on or before the first day of June of each year deliver to the treasurer of each city, town, and fire protection district coming under the provisions of this chapter his or her warrant, payable to each city, town, or fire protection district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town, or fire protection district shall place the amount thereof to the credit of the firemen's pension fund of such city, town, or fire protection district.

Sec. 4. RCW 41.24.170 and 1995 c 11 s 7 are each amended to read as follows:

Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and which municipality and participant are enrolled under the retirement provisions, and the participant has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension as provided in this section.

Whenever a participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such participant be paid a monthly pension of two hundred (~~twenty-five~~) eighty dollars from the fund for the balance of that participant's life.

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of (~~twenty-five~~)

thirty dollars increased by the sum of ~~((eight))~~ ten dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any participant, ~~((upon completion of))~~ who is older than fifty-nine years of age, less than sixty-five years of age, and has completed twenty-five ~~((years))~~ years or more of service ~~((and attainment of age sixty;))~~ may irrevocably elect~~((;))~~ a reduced monthly pension in lieu of the pension ~~((to which))~~ that participant would be entitled to under this section at age sixty-five~~((, to))~~. The participant who elects this option shall receive the reduced pension for the balance of his or her life ~~((a monthly pension equal to sixty percent of such pension:~~

~~—(2) Any participant, upon completion of twenty-five years' service and attainment of age sixty-two, may irrevocably elect, in lieu of the pension to which that participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to seventy-five percent of such pension:~~

~~—(3) Any participant, upon completion of less than twenty-five years of service shall receive the applicable reduced pension provided in this subsection, according to the age at which that participant elects to begin to receive the pension. If receipt of the benefits begins at age sixty-five the participant shall receive one hundred percent of the reduced benefit; at age sixty-two the participant shall receive seventy-five percent of the reduced benefit; and at age sixty the participant shall receive sixty percent of the reduced benefit). The reduced monthly pension is calculated as a percentage of the pension the participant would be entitled to at age sixty-five. The percentage used in the calculation is based upon the age of the participant at the time of retirement as follows:~~

<u>Age 60</u>	<u>Sixty percent</u>
<u>Age 61</u>	<u>Sixty-eight percent</u>
<u>Age 62</u>	<u>Seventy-six percent</u>
<u>Age 63</u>	<u>Eighty-four percent</u>
<u>Age 64</u>	<u>Ninety-two percent</u>

(2) If a participant is age sixty-five or older but has less than twenty-five years of service, the participant is entitled to a reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to ~~((fifteen))~~ twenty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty-five percent of such pension as the participant

would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to ~~((sixty))~~ seventy-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service.

(3) If a participant with less than twenty-five years of service elects to retire after turning age sixty but before turning age sixty-five, the participant's retirement allowance is subject:

(a) First to the reduction under subsection (2) of this section based upon the participant's years of service; and

(b) Second to the reduction under subsection (1) of this section based upon the participant's age.

Sec. 5. RCW 41.24.160 and 1998 c 151 s 1 are each amended to read as follows:

(1) Whenever a fire fighter, or a reserve officer provided a benefit under this section, dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment of the sum of one hundred fifty-two thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her dependent parents or either of them, or if there are no dependent parents or parent, then the death benefit shall be paid to the member's estate, and the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower during his or her life together with the additional monthly sum of one hundred ten dollars for each child of the member, unemancipated or under eighteen years of age, dependent upon the member for support at the time of his or her death, to a maximum total of two thousand five hundred fifty dollars per month.

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased fire fighter or if, after the death of the fire fighter, legal custody of such child or children passes from the widow or widower to another person, any payment on account of such child or children not in the legal custody of the widow or widower shall be made to the person or persons having legal custody of such child or children. Such payments on account of such child or children shall be subtracted from the amount to which such widow or widower would have been entitled had such widow or widower had legal custody of all the children and the widow or widower shall receive the remainder after such payments on account of such child or children have been subtracted. If there is no widow or widower, or the widow or widower dies while there are children, unemancipated or under eighteen years of age, then the amount of eight hundred twenty-five dollars per month shall be paid for the youngest or only child together with an additional seventy dollars per month for each additional of such children

to a maximum of one thousand six hundred fifty dollars per month until they become emancipated or reach the age of eighteen years; and if there are no widow or widower, child, or children entitled thereto, then to his or her parents or either of them the sum of eight hundred twenty-five dollars per month for life, if it is proved to the satisfaction of the board that the parents, or either of them, were dependent on the deceased for their support at the time of his or her death. In any instance in subsections (1) and (2) of this section, if the widow or widower, child or children, or the parents, or either of them, marries while receiving such pension the person so marrying shall thereafter receive no further pension from the fund.

(3) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twelve thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is hereby given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. Any person receiving a monthly payment under this section on June 29, 1961, may elect, within two years, to convert such payments into a lump sum payment as provided in this section.

Sec. 6. RCW 41.24.172 and 1995 c 11 s 9 are each amended to read as follows:

Before beginning to receive the pension provided for in RCW 41.24.170, the participant shall elect, in a writing filed with the state board, to have the pension paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A participant electing this option shall receive a monthly pension payable throughout the participant's life. However, if the participant dies before the total pension paid to the participant equals the amount paid into the fund, then the balance shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to the participant's legal representatives.

(2) Option 2. A participant electing this option shall receive a reduced monthly pension, which upon the participant's death shall be continued throughout the life of and paid to the participant's surviving spouse named in the written election filed with the state board, however, in the event that the surviving spouse dies before the participant, the participant's monthly retirement allowance shall increase, effective the first day of the following month, to the monthly amount that would have been received had the participant elected option 1.

Passed the Senate March 12, 1999.
 Passed the House April 12, 1999.
 Approved by the Governor April 28, 1999.
 Filed in Office of Secretary of State April 28, 1999.

CHAPTER 118

[Senate Bill 5105]

PUBLIC WATER SYSTEM—DEFINITION

AN ACT Relating to revising the definition of public water system to include systems providing water through constructed conveyances, in conformance with federal law; amending RCW 70.119A.020; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds and declares that the provision of safe and reliable water supplies is essential to public health and the continued economic vitality of the state of Washington. Maintaining the authority necessary to ensure safe and reliable water supplies requires that state laws conform with the provisions of the federal safe drinking water act. It is the intent of the legislature that the definition of public water system be amended to reflect recent amendments to the federal safe drinking water act.

Sec. 2. RCW 70.119A.020 and 1994 c 252 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

- (1) "Department" means the department of health.
- (2) "Local board of health" means the city, town, county, or district board of health.
- (3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.
- (4) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing ((piped)) water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:
 - (a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and
 - (b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.

(6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(7) "Regulations" means rules adopted to carry out the purposes of this chapter.

(8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(9) "Area-wide waivers" means a waiver granted by the department as a result of a geographically based testing program meeting required provisions of the federal safe drinking water act.

(10) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(11) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(12) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(13) "Secretary" means the secretary of the department of health.

(14) "State board of health" is the board created by RCW 43.20.030.

Passed the Senate March 11, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 119

[Senate Bill 5122]

INDUSTRIAL INSURANCE BENEFITS—REPAYMENT STATUTE OF LIMITATIONS

AN ACT Relating to the statute of limitations for the repayment or recoupment of industrial insurance benefits induced by claimant fraud; and amending RCW 51.32.240.

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

Sec. 1. RCW 51.32.240 and 1991 c 88 s 1 are each amended to read as follows:

(1) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar

nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(3) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the fraud was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within ~~(one)~~ three years of the discovery of the fraud.

(5) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (4) of this section, the director, director's designee, or self-insurer may file with the clerk in any county

within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the

director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(6) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer.

Passed the Senate March 4, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 120

[Engrossed Senate Bill 5798]

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

AN ACT Relating to temporary assistance for needy families; amending RCW 74.12.010, 74.12.035, and 74.08A.120; and repealing RCW 74.12.036.

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

Sec. 1. RCW 74.12.010 and 1997 c 59 s 16 are each amended to read as follows:

For the purposes of the administration of temporary assistance for needy families, the term "dependent child" means any child in need under the age of eighteen years who ~~((has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent, and who))~~ is living with a relative as specified under federal temporary assistance for needy families program requirements, in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative

within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he had been living with such a relative and application had been made therefor, as authorized by the Social Security Act(~~(-- PROVIDED, That to the extent authorized by the legislature in the biennial appropriations act and to the extent that matching funds are available from the federal government, temporary assistance for needy families assistance shall be available to any child in need who has been deprived of parental support or care by reason of the unemployment of a parent or stepparent liable under this chapter for support of the child)).~~

"Temporary assistance for needy families" means money payments, services, and remedial care with respect to a dependent child or dependent children and the needy parent or relative with whom the child lives (~~(and may include another parent or stepparent of the dependent child if living with the parent and if the child is a dependent child by reason of the physical or mental incapacity or unemployment of a parent or stepparent liable under this chapter for the support of such child)).~~

Sec. 2. RCW 74.12.035 and 1997 c 59 s 18 are each amended to read as follows:

(1) (~~(A family or assistance unit is not eligible for aid for any month if for that month the total income of the family or assistance unit, without application of income disregards, exceeds one hundred eighty-five percent of the state standard of need for a family of the same composition: PROVIDED, That for the purposes of determining the total income of the family or assistance unit, the earned income of a dependent child who is a full-time student for whom temporary assistance for needy families is being provided shall be disregarded for six months per calendar year.~~

~~—(2) Participation in a strike does not constitute good cause to leave or to refuse to seek or accept employment. Assistance is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of the month, participating in a strike. An individual's need shall not be included in determining the amount of aid payable for any month to a family or assistance unit if, on the last day of the month, the individual is participating in a strike.~~

~~—(3)) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive temporary assistance for needy families: PROVIDED HOWEVER, That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during such period shall not be a debt due the state.~~

(2) Children with disabilities who are eighteen years of age and under twenty-one years of age and who are full-time students whose education is being provided in accordance with RCW 28A.155.020 are eligible to receive temporary assistance for needy families benefits.

(3) The department is authorized to grant exceptions to the eligibility restrictions for children eighteen years of age and under twenty-one years of age under subsection (1) and (2) of this section only when it determines by reasonable, objective criteria that such exceptions are likely to enable the children to complete their high school education, general equivalency diploma or vocational education.

NEW SECTION. Sec. 3. RCW 74.12.036 and 1997 c 59 s 19 & 1994 c 299 s 11 are each repealed.

Sec. 4. RCW 74.08A.120 and 1997 c 57 s 3 are each amended to read as follows:

(1) The department may establish a food assistance program for ~~((persons whose immigrant status meets the eligibility requirements of the federal food stamp program, but who are no longer eligible solely due to their immigrant status under P.L. 104-193))~~ legal immigrants who are ineligible for the federal food stamp program.

(2) The rules for the state food assistance program shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status ~~((under P.L. 104-193)).~~

(3) The benefit under the state food assistance program shall be established by the legislature in the biennial operating budget.

(4) The department may enter into a contract with the United States department of agriculture to use the existing federal food stamp program coupon system for the purposes of administering the state food assistance program.

(5) In the event the department is unable to enter into a contract with the United States department of agriculture, the department may issue vouchers to eligible households for the purchase of eligible foods at participating retailers.

Passed the Senate March 17, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 121

[Engrossed Substitute Senate Bill 5909]

COLLEGE BOARD WORKER RETRAINING PROGRAM

AN ACT Relating to a worker retraining program; amending RCW 28C.04.410 and 28C.04.420; adding new sections to chapter 28C.04 RCW; and repealing RCW 28C.04.430, 28C.04.440, 28C.04.450, 28C.04.460, and 28C.04.480.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28C.04 RCW to read as follows:

(1) The college board worker retraining program funds shall be used for training programs and related support services, including financial aid, counseling, referral to training resources, job referral, and job development that:

(a) Are consistent with the unified plan for work force development;

(b) Provide increased enrollments for dislocated workers;

(c) Provide customized training opportunities for dislocated workers; and

(d) Provide increased enrollments and support services, including financial aid for those students not receiving unemployment insurance benefits, that do not replace or supplant any existing enrollments, programs, support services, or funding sources.

(2) The college board shall develop a plan for use of the worker retraining program funds in conjunction with the work force training customer advisory committee established in subsection (3) of this section. In developing the plan the college board shall:

(a) Provide that applicants for worker retraining program funds shall solicit financial support for training programs and give priority in receipt of funds to those applicants which are most successful in matching public dollars with financial support;

(b) Provide that applicants for worker retraining program funds shall develop training programs in partnership with local businesses, industry associations, labor, and other partners as appropriate and give priority in receipt of funds to those applicants who develop customized training programs in partnership with local businesses, industry associations, and labor organizations;

(c) Give priority in receipt of funds to those applicants serving rural areas;

(d) Ensure that applicants receiving worker retraining program funds gather information from local work force development councils on employer work force needs, including the needs of businesses with less than twenty-five employees; and

(e) Provide for specialized vocational training at a private career school or college at the request of a recipient eligible under subsection (1)(b) of this section. Available tuition for the training is limited to the amount that would otherwise be payable per enrolled quarter to a public institution.

(3) The executive director of the college board shall appoint a work force training customer advisory committee by July 1, 1999, to:

(a) Assist in the development of the plan for the use of the college board worker retraining program funds and recommend guidelines to the college board for the operation of worker retraining programs;

(b) Recommend selection criteria for worker retraining programs and grant applicants for receipt of worker retraining program grants;

(c) Provide advice to the college board on other work force development activities of the community and technical colleges;

(d) Recommend selection criteria for job skills grants, consistent with criteria established in this chapter and this act. Such criteria shall include a prioritization of job skills applicants in rural areas;

(e) Recommend guidelines to the college board for the operation of the job skills program; and

(f) Recommend grant applicants for receipt of job skills program grants.

(4) Members of the work force training customer advisory committee shall consist of three college system representatives selected by the executive director of the college board, three representatives of business selected from nominations provided by state-wide business organizations, and three representatives of labor selected from nominations provided by a state-wide labor organization representing a cross-section of workers in the state.

Sec. 2. RCW 28C.04.410 and 1983 1st ex.s. c 21 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout section 1 of this act and RCW ((28C.04.040 and)) 28C.04.420 ((through 28C.04.480)).

(1) "Applicant" means an educational institution which has made application for a job skills grant under section 1 of this act and RCW 28C.04.420 ((through 28C.04.480)).

(2) "Business and industry" means a private corporation, institution, firm, person, group, or association concerned with commerce, trades, manufacturing, or the provision of services within the state, or a public or nonprofit hospital licensed by the department of social and health services.

(3) "Dislocated worker" means an individual who meets the definition of dislocated worker contained in P.L. 105-220, Sec. 101 on the effective date of this act.

(4) "Educational institution" means a public secondary or postsecondary institution ~~((or)),~~ an independent institution, or a private career school or college within the state authorized by law to provide a program of skills training or education beyond the secondary school level. Any educational institution receiving a job skills grant under RCW 28C.04.420 through 28C.04.480 shall be free of sectarian control or influence as set forth in Article IX, section 4 of the state Constitution.

~~((4))~~ (5) "Equipment" means tangible personal property which will further the objectives of the supported program and for which a definite value and evidence in support of the value have been provided by the donor.

~~((5))~~ (6) "Financial support" means any thing of value which is contributed by business ~~((and)),~~ industry, and others to an educational institution which is reasonably calculated to support directly the development and expansion of a particular program under section 1 of this act and RCW 28C.04.420 ((through 28C.04.480)) and represents an addition to any financial support previously or customarily provided to such educational institutions by the donor. "Financial support" includes, but is not limited to, funds, equipment, facilities, faculty, and scholarships for matriculating students and trainees.

~~((6))~~ (7) "Job skills grant" means funding that is provided to an educational institution by the commission for the development or significant expansion of a program under section 1 of this act and RCW 28C.04.420 ((through 28C.04.480)).

~~((7))~~ (8) "Job skills program" means a program of skills training or education separate from and in addition to existing vocational education programs and which:

(a) Provides short-term training which has been designated for specific industries;

(b) Provides training for prospective employees before a new plant opens or when existing industry expands;

(c) Includes training and retraining for workers already employed by an existing industry or business where necessary to avoid dislocation or where upgrading of existing employees would create new vacancies for unemployed persons;

(d) Serves areas with high concentrations of economically disadvantaged persons and high unemployment;

(e) Serves areas with new and growing industries;

(f) Serves areas where there is a shortage of skilled labor to meet job demands;

or

(g) Promotes the location of new industry in areas affected by economic dislocation.

~~((8))~~ (9) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program and which represents an addition to any technical assistance previously or customarily provided to the educational institutions by the donor.

~~((9) "Commission" or "commission for vocational education" shall mean the commission for vocational education or any successor agency or organization.))~~

(10) "College board" means the state board for community and technical colleges under chapter 28B.50 RCW.

Sec. 3. RCW 28C.04.420 and 1983 1st ex.s. c 2I s 4 are each amended to read as follows:

The ~~((commission))~~ college board may, subject to appropriation from the legislature or from funds made available from any other public or private source and pursuant to rules adopted by the ~~((commission))~~ college board with the advice of the work force training customer advisory committee established in section 1 of this act, provide job skills grants to educational institutions. The job skills grants shall be used exclusively for programs which are consistent with the job skills program. ~~((A job skills grant may be awarded only after:~~

~~(1) Receipt of an application from an educational institution which contains a proposal for a program of skills training and education, including a description of the program, the type of skills training or education to be provided, a statement of the total cost of the program and a breakdown of the costs associated with equipment, personnel, facilities, and materials, a statement of the employment needs for the program and evidence in support thereof, demonstrates that the program does not unnecessarily duplicate existing programs in the area and is provided at a reasonable cost, a statement of the technical assistance and financial~~

support for the program received or to be received from business and industry, and such other information as the commission requests; and

—(2) The commission, based on the application submitted by the educational institution and such additional investigation as the staff of the commission shall make, finds that:

—(a)) The college board shall work in collaboration with the work force training customer advisory committee established in section 1 of this act to assure that:

(1) The program is within the scope of the job skills program under this chapter and may reasonably be expected to succeed and thereby increase employment within the state;

((b)) (2) Provision has been made to use any available alternative funding from local, state, and federal sources;

((c)) (3) The job skills grant will only be used to cover the costs associated with the program;

((d)) (4) The program will not unnecessarily duplicate existing programs and could not be provided by another educational institution more effectively or efficiently;

((e)) (5) The program involves an area of skills training and education for which there is a demonstrable need;

((f)) (6) The applicant has made provisions for the use of existing federal and state resources for student financial assistance;

((g)) (7) The job skills grant is essential to the success of the program as the resources of the applicant are inadequate to attract the technical assistance and financial support necessary for the program from business and industry;

((h)) (8) The program represents a collaborative partnership between business, industry, labor, educational institutions, and other partners, as appropriate;

(9) The commitment of financial support from business and industry shall be equal to or greater than the amount of the requested job skills grant;

((i)) (10) Binding commitments have been made to the commission by the applicant for adequate reporting of information and data regarding the program to the commission, particularly information concerning the recruitment and employment of trainees and students, and including a requirement for an annual or other periodic audit of the books of the applicant directly related to the program, and for such control on the part of the commission as it considers prudent over the management of the program, so as to protect the use of public funds, including, in the discretion of the commission and without limitation, right of access to financial and other records of the applicant directly related to the programs; and

((j)) (11) A provision has been made by the applicant to work, in cooperation with the employment security department, to identify and screen potential trainees, and that provision has been made by the applicant ((e)) for the participation as trainees of low-income persons ((who are victims of economic dislocation))

including temporary assistance for needy families recipients, dislocated workers, and persons from minority and economically disadvantaged groups to participate in the program~~((; and~~

~~—(k) Binding commitments have been made to the commission by the applicant for compliance with the monitoring and evaluation rules of the commission)).~~

Beginning October 1, 1999, and every two years thereafter, the college board shall provide the legislature and the governor with a report describing the activities and outcomes of the state job skills program.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

(1) RCW 28C.04.430 (Job skills program—Notification of approval of grant to employment security department—Contents) and 1983 1st ex.s. c 21 s 5;

(2) RCW 28C.04.440 (Job skills program—Interagency agreement by commission and the department of community, trade, and economic development and the employment security department) and 1995 c 399 s 32, 1985 c 466 s 40, & 1983 1st ex.s. c 21 s 6;

(3) RCW 28C.04.450 (Job skills program—Duties of employment security department) and 1983 1st ex.s. c 21 s 7;

(4) RCW 28C.04.460 (Job skills program—Duties of department of community, trade, and economic development) and 1995 c 399 s 33, 1985 c 466 s 41, & 1983 1st ex.s. c 21 s 8; and

(5) RCW 28C.04.480 (Job skills program—Participant deemed to be in training for purposes of RCW 50.20.043) and 1983 1st ex.s. c 21 s 10.

Passed the Senate March 12, 1999.

Passed the House April 15, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 122

[Senate Bill 5233]

DEPARTMENT OF CORRECTIONS—CIVIL SERVICE EXEMPTIONS

AN ACT Relating to civil service exemptions within the department of corrections; and amending RCW 41.06.071.

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

Sec. 1. RCW 41.06.071 and 1989 c 185 s 1 are each amended to read as follows:

In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter shall not apply in the department of corrections to the secretary, the secretary's personal secretary, the deputy ~~((secretary))~~ secretaries and their personal secretaries, all ~~((division directors and assistant directors))~~ assistant deputy secretaries and their personal secretaries, all regional administrators and program administrators, all facility superintendents and associate superintendents for

facilities with a resident capacity of fifty or more, and all management and sales staff of correctional industries.

Passed the Senate March 13, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 123

[Engrossed Substitute Senate Bill 5348]

STATE LIBRARY COMMISSION

AN ACT Relating to the membership and responsibilities of the state library commission; amending RCW 27.04.010, 27.04.020, 27.04.030, and 27.04.045; adding a new section to chapter 27.04 RCW; and repealing RCW 27.04.050 and 27.04.110.

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

Sec. 1. RCW 27.04.010 and 1943 c 207 s 1 are each amended to read as follows:

There shall be a state library, with a state library commission to serve as the library's governing board, and a state librarian ~~((as the))~~ to serve as its chief executive officer ((in charge thereof)).

Sec. 2. RCW 27.04.020 and 1984 c 287 s 58 are each amended to read as follows:

(1) A state library commission is ~~((hereby))~~ created ((which)) and shall consist of ~~((the superintendent of public instruction, who shall be ex officio chairman of the commission, and four))~~ five commissioners appointed by the governor ~~((one of whom shall be a library trustee at the time of appointment and one a certified librarian actually engaged in library work at the time of appointment)).~~ The commission shall elect the chair from its membership.

(2) The ~~((first appointments shall be for terms of one, two, three, and four years respectively, and thereafter one commissioner shall be appointed each year to serve for a four-year term))~~ commission appointment expiring in July 1999 shall thereafter be filled by a certified librarian actually engaged in library work at the time of appointment. The commission appointment expiring in July 2000 shall thereafter be filled by a member of the general public. The commission appointment expiring in July 2001 shall thereafter be filled by a representative from an executive branch agency. The commission appointment expiring in July 2002 shall thereafter be filled by a library trustee at the time of appointment. The position held by the superintendent of public instruction shall be filled by an educator with knowledge in library and information technology policy, with an initial expiration date of 2003. A full term is five years. Commissioners may serve until reappointed or replaced. Vacancies shall be filled by appointments for the unexpired terms. An unexpired term of more than two and one-half years is considered a full term for purposes of reappointment. The governor may remove

a commissioner for cause, in accordance with RCW 43.06.070. Each commissioner shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in the actual performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

Sec. 3. RCW 27.04.030 and 1987 c 330 s 401 are each amended to read as follows:

The state library commission:

(1) May make such rules under chapter 34.05 RCW as may be deemed necessary and proper to carry out the purposes of this chapter;

(2) Shall set general policy and strategic directions pursuant to the provisions of this chapter;

(3) Shall monitor agency progress toward its goals and objectives;

(4) Shall exert leadership in the development of information access and library services;

(5) Shall appoint a state librarian who shall serve at the pleasure of the commission. The commission may delegate such responsibilities and duties to the state librarian as it deems appropriate and shall regularly evaluate the performance of the state librarian;

~~((4))~~ (6) Shall adopt ~~((a))~~ recommended budgets and submit ~~((it))~~ them to the governor;

~~((5))~~ ~~Shall have authority to contract with any agency of the state of Washington for the purpose of providing library materials, supplies, and equipment and employing assistants as needed for the development, growth, and operation of any library facilities or services of such agency;~~

~~((6))~~ (7) Shall have authority to contract with any public library in the state for that library to render library service to the blind and/or physically handicapped throughout the state. The state library commission shall have authority to compensate such public library for the cost of the service it renders under such contract;

~~((7))~~ (8) May adopt rules under chapter 34.05 RCW for the allocation of ~~((any))~~ grants of state, federal, or private funds ~~((for library purposes));~~

~~((8))~~ (9) Shall have authority to accept and to expend in accordance with the terms thereof ~~((any))~~ grants of federal, state, local, or private funds ~~((which may become available to the state for library purposes)).~~ For the purpose of qualifying to receive such grants, the state library commission is authorized to make ~~((such))~~ applications and reports ~~((as may be))~~ required by the ~~((federal government or appropriate private entity as a condition thereto))~~ grantor;

~~((9))~~ ~~Shall have the authority to provide for the sale of library material in accordance with RCW 27.12.305;))~~ and

(10) ~~((Shall have authority to establish rules and regulations for, and prescribe and hold examinations to test, the qualifications of those seeking certificates as librarians;~~

~~—(a) The commission shall grant librarians' certificates without examination to applicants who are graduates of library schools accredited by the American library association for general library training, and shall grant certificates to other applicants when it has satisfied itself by examination that the applicant has attainments and abilities equivalent to those of a library school graduate and is qualified to carry on library work ably and efficiently.~~

~~—(b) The commission shall require a fee of not less than one dollar nor greater than that required to recover the costs associated with the application to be paid by each applicant for a librarian's certificate. Money paid as fees shall be deposited with the state treasurer.~~

~~—(c) A library serving a community having over four thousand population shall not have in its employ, in the position of librarian or in any other full-time professional library position, a person who does not hold a librarian's certificate issued by the commission or its predecessor.~~

~~—(d) A full-time professional library position, as intended by this subsection, is one that requires, in the opinion of the commission, a knowledge of books and of library technique equivalent to that required for graduation from an accredited library school.~~

~~—(e) The provisions of this subsection apply to every library serving a community having over four thousand population and to every library operated by the state or under its authority, including libraries of institutions of higher learning: PROVIDED, That nothing in this subsection applies to the state law library or to county law libraries)) Shall establish content-related standards for common formats and agency indexes for state agency-produced information. In developing these standards, the commission is encouraged to seek involvement of, and comments from, public and private entities with an interest in such standards.~~

NEW SECTION. Sec. 4. A new section is added to chapter 27.04 RCW to read as follows:

No library serving a community having over four thousand population, nor any library operated by the state or under its authority, may have in its employ, in the position of librarian or in any other full-time professional library position, a person who does not hold a librarian's certificate issued by the commission or its predecessor. A full-time professional library position, is one that requires, in the opinion of the commission, a knowledge of information resources and library/information service delivery equivalent to that required for graduation from an accredited library education program. This section does not apply to the state law library or to county law libraries. The state library commission shall:

(1) Establish rules for, and prescribe and hold examinations to test, the qualifications of those seeking certificates as librarians;

(2) Grant librarians' certificates without examination to applicants who are graduates of library schools programs accredited or otherwise officially recognized by the American library association for general library training, and grant certificates to other applicants when it has satisfied itself by examination that the

applicant has attainments and abilities equivalent to those of a graduate of a library school program accredited or otherwise officially recognized by the American library association; and

(3) Charge a fee to recover the costs associated with the application to be paid by each applicant for a librarian's certificate. Money paid as fees shall be retained by the state library as a recovery of costs.

Sec. 5. RCW 27.04.045 and 1996 c 171 s 6 are each amended to read as follows:

The state (~~(library commission))~~ librarian shall be responsible and accountable for the following functions:

(1) Advising the commission and implementing policies, directions, and delegated authority set by the commission;

(2) Managing and administering the state library;

(3) Exerting leadership in information access and the development of library services;

(4) Acquiring library materials, equipment, and supplies by purchase, exchange, gift, or otherwise; and, as appropriate, assisting the legislature, other state agencies, and other libraries in the cost-effective purchase of information resources;

(5) Employing and terminating personnel in accordance with chapter 41.06 RCW as may be necessary to implement the purposes of this chapter;

(6) Entering into agreements with other public or private entities as a means of implementing the mission, goals, and objectives of the state library and the entity with which it enters such agreements. In agreements for services between the library and other state agencies, the library may negotiate an exchange of services in lieu of monetary reimbursement for the library's indirect or overhead costs, when such an arrangement facilitates the delivery of library services;

(7) Maintaining a library at the state capitol grounds to effectively provide library and information services to members of the legislature, state officials, and state employees in connection with their official duties;

~~((2) Acquiring and making available information, publications, and source materials that pertain to the history of the state;~~

~~—(3))~~ (8) Serving as the depository for newspapers published in the state of Washington thus providing a central location for a valuable historical record for scholarly, personal, and commercial reference and circulation;

~~((4))~~ (9) Promoting and facilitating electronic access to public information and services, including providing, or providing for, a service that identifies, describes, and provides location information for government information through electronic means, and that assists government agencies in making their information more readily available to the public;

~~((5) Establishing content-related standards for common formats and agency indexes for state agency produced information. In developing these standards, the~~

~~commission is encouraged to include the state archives, the department of information services, and public and academic libraries;~~

~~—(6)) (10) Collecting and distributing copies of state publications ((by ensuring that:~~

~~—(a) The state library collects and makes available as part of its collection copies of any state publication)), as defined in RCW 40.06.010, prepared by any state agency ((whenever fifteen or more copies are prepared)) for distribution. The state library shall maintain the state publications distribution center, as provided in chapter 40.06 RCW. The state library commission, on recommendation of the state librarian, may provide by rule for deposit with the state library of up to three copies of ((such)) each publication;((and~~

~~—(b) The state library maintains a division to serve as state publications distribution center, as provided in chapter 40.06 RCW;~~

~~—(7)) (11) Providing for the sale of library material in accordance with RCW 27.12.305;~~

(12) Providing advisory services to state agencies regarding their information needs;

~~((8)) (13) Providing for library and information service to residents and staff of state-supported residential institutions;~~

~~((9)) (14) Providing for library and information services to persons throughout the state who are blind and/or physically handicapped;~~

~~((10)) (15) Assisting individuals and groups such as libraries, library boards, governing bodies, and citizens throughout the state toward the establishment and development of library services;~~

~~((11)) (16) Making studies and surveys of library needs in order to provide, expand, enlarge, and otherwise improve access to library facilities and services throughout the state; and~~

~~((12)) (17) Serving as ((a primary)) an interlibrary loan, information, reference, and referral ((center)) resource for all libraries in the state((;~~

~~—(13) Assisting in the provision of direct library and information services to individuals;~~

~~—(14) Overseeing of the Washington library network in accordance with chapters 27.26 and 43.105 RCW. This subsection shall expire on June 30, 1997)). The state library may charge lending fees to other libraries who charge the state library for similar services. Money paid as fees shall be retained by the state library as a recovery of costs.~~

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

(1) RCW 27.04.050 (Duties of librarian) and 1984 c 152 s 3 & 1943 c 207 s 3; and

(2) RCW 27.04.110 (Learn-in-libraries program) and 1998 c 245 s 10, 1991 c 91 s 1, & 1990 c 290 s 2.

Passed the Senate February 26, 1999.
Passed the House April 12, 1999.
Approved by the Governor April 28, 1999.
Filed in Office of Secretary of State April 28, 1999.

CHAPTER 124

[Substitute Senate Bill 5352]

BOUNDARY REVIEW BOARDS—MEMBERS' TERMS

AN ACT Relating to terms of members of boundary review boards; repealing RCW 36.93.065; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** RCW 36.93.065 (Boards in existence as of July 23, 1989—Staggering of terms—Limitation of term of office) and 1989 c 84 s 20 are each repealed.

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

Passed the Senate February 17, 1999.
Passed the House April 12, 1999.
Approved by the Governor April 28, 1999.
Filed in Office of Secretary of State April 28, 1999.

CHAPTER 125

[Senate Bill 5606]

ENVIRONMENTAL HEARINGS OFFICE—ADMINISTRATIVE APPEALS JUDGES

AN ACT Relating to administrative appeals judges in the environmental hearings office; and amending RCW 43.21B.005.

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

Sec. 1. RCW 43.21B.005 and 1990 c 65 s 1 are each amended to read as follows:

(1) There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, the shorelines hearings board created in RCW 90.58.170, and the hydraulic appeals board created in RCW 75.20.130. The chairman of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

(2) The chief executive officer of the environmental hearings office may appoint an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

(3) The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the chief executive officer. Upon written request by the person so disciplined or terminated, the chief executive officer shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The chief executive officer may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The chief executive officer may also contract for required services.

Passed the Senate March 9, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 126

[Engrossed Second Substitute Senate Bill 5658]

SEA URCHIN AND SEA CUCUMBER LICENSES AND REVENUES

AN ACT Relating to sea urchin and sea cucumber dive fishery licenses and revenues; amending RCW 75.30.210, 75.30.250, 82.27.020, and 82.27.070; and providing an effective date.

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

Sec. 1. RCW 75.30.210 and 1998 c 190 s 104 are each amended to read as follows:

(1) A ~~((person shall not commercially take any species of sea urchin using shellfish diver gear without first obtaining a))~~ sea urchin dive fishery license is required to take sea urchins for commercial purposes. A sea urchin dive fishery license authorizes the use of only one diver in the water at any time during sea urchin harvest operations. If the same vessel has been designated on two sea urchin dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea urchin dive fishery licenses.

(2) Except as provided in subsection ~~((s (3) and))~~ (6) of this section, ~~((after December 31, 1991,))~~ the director shall issue no new sea urchin dive fishery licenses. ~~((Only a person who meets the following qualifications may renew an existing license:~~

~~—(a) The person shall have held the sea urchin dive fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year; and~~

~~—(b) The person shall document, by valid shellfish receiving tickets issued by the department, that twenty thousand pounds of sea urchins were caught and sold under the license sought to be renewed during the two-year period ending March 31 of the most recent odd-numbered year.)~~ For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea urchin dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) ~~Where ((the person)) a licensee failed to obtain the license during the previous year because of a license suspension or revocation by the department or the court, the ((person)) licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.~~

(4) ~~((The director may reduce or waive the poundage requirement of subsection (2)(b) of this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."))~~ Surcharges as provided for in this section shall be collected and deposited into the sea urchin dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea urchin dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea urchin licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea urchin management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea urchin dive fishery license renewal for licenses issued in 2000 through 2005.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea urchin dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) ~~Sea urchin dive fishery licenses are ((not)) transferable ((from one license holder to another, except from parent to child, or from spouse to spouse during~~

~~marriage or as a result of marriage dissolution, or upon the death of the license holder)).~~ After December 31, 1999, there is a surcharge to transfer a sea urchin dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000, and two thousand five hundred dollars for any subsequent transfer, whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

~~(6) If fewer than ((forty-five)) twenty-five natural persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. ((The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain up to forty-five licenses in the sea urchin dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050-))~~ The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea urchin dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege.

Sec. 2. RCW 75.30.250 and 1998 c 190 s 105 are each amended to read as follows:

~~(1) A ((person shall not commercially take while using shellfish diver gear any species of sea cucumber without first obtaining a)) sea cucumber dive fishery license~~ is required to take sea cucumbers for commercial purposes. A sea cucumber dive fishery license authorizes the use of only one diver in the water at any time during sea cucumber harvest operations. If the same vessel has been designated on two sea cucumber dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea cucumber dive fishery licenses.

~~(2) Except as provided in subsection (6) of this section, ((after December 31, 1991;)) the director shall issue no new sea cucumber dive fishery licenses. ((Only a person who meets the following qualifications may renew an existing license:~~
~~— (a) The person shall have held the sea cucumber dive fishery license sought to be renewed during the previous two years or acquired the license by transfer from someone who held it during the previous year; and~~
~~— (b) The person shall establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers totaling at least ten thousand pounds were made under the license during the previous two-year period ending December 31 of the odd-numbered year.))~~ For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea cucumber dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation

or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where ~~((the person))~~ a licensee failed to obtain the license during either of the previous two years because of a license suspension by the department or the court, the ~~((person))~~ licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

~~(4) ((The director may reduce or waive any landing or poundage requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of any landing or poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the landing or poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."))~~ Surcharges as provided for in this section shall be collected and deposited into the sea cucumber dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea cucumber dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea cucumber licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea cucumber management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea cucumber dive fishery license renewal for licenses issued in 2000 through 2005.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea cucumber dive fishery for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) ~~Sea cucumber dive fishery licenses are ((not)) transferable ((from one license holder to another except from parent to child, from spouse to spouse during marriage or as a result of marriage dissolution, or upon death of the license holder)).~~ After December 31, 1999, there is a surcharge to transfer a sea cucumber dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000 and two thousand five hundred dollars for any subsequent transfer whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than ~~((fifty))~~ twenty-five persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses ~~((from~~

~~those persons who can demonstrate two years' experience in the Washington state sea cucumber dive fishery. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain up to fifty licenses in the sea cucumber dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea cucumber dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050). The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea cucumber dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege.~~

Sec. 3. RCW 82.27.020 and 1993 sp.s. c 17 s 12 are each amended to read as follows:

(1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent((-);

(b) Pink and sockeye salmon: Three and fifteen one-hundredths percent((-);

(c) Other food fish and shellfish, except oysters, sea urchins, and sea cucumbers: Two and one-tenth percent((-);

(d) Oysters: Eight one-hundredths of one percent;

(e) Sea urchins: Four and six-tenths percent through December 31, 2005, and two and one-tenth percent thereafter; and

(f) Sea cucumbers: Four and six-tenths percent through December 31, 2005, and two and one-tenth percent thereafter.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section.

Sec. 4. RCW 82.27.070 and 1988 c 36 s 61 are each amended to read as follows:

All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the wildlife fund, and, during the period January 1, 2000, to December 31, 2005, twenty-five forty-sixths of the revenues derived from the excise tax on sea urchins collected under RCW 82.27.020 shall be deposited into the sea urchin dive fishery account created in RCW 75.30.210, and twenty-five forty-sixths of the revenues derived from the excise tax on sea cucumbers collected under RCW 82.27.020 shall be deposited into the sea cucumber dive fishery account created in RCW 75.30.250.

NEW SECTION. Sec. 5. Section 3 of this act takes effect January 1, 2000.

Passed the Senate March 12, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 127

[Senate Bill 5702]

PHYSICIAN ASSISTANT LICENSING

AN ACT Relating to physician assistant licensing and practice restrictions; and amending RCW 18.71A.020 and 18.57A.020.

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

Sec. 1. RCW 18.71A.020 and 1998 c 132 s 14 are each amended to read as follows:

(1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and ~~((eligibility to take))~~ within one year successfully take and pass an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. An interim permit may be granted by the department of health for one year provided the applicant meets all other requirements. Physician assistants licensed by the board of medical examiners, or the medical quality assurance commission as of ((June 7, 1999)) July 1, 1999, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and
 (ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of twenty-five dollars per year shall be charged on each license renewal or issuance of a new license to be collected by the department and deposited into the impaired physician account for physician assistant participation in the impaired physician program. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The commission may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

Sec. 2. RCW 18.57A.020 and 1998 c 132 s 13 are each amended to read as follows:

(1) The board shall adopt rules fixing the qualifications and the educational and training requirements for licensure as an osteopathic physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and ~~((eligibility to take))~~ within one year successfully take and pass an examination approved by the board, providing such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. An interim permit may be granted by the department of health for one year provided the applicant meets all other requirements. Physician assistants licensed by the board of osteopathic medicine as of July 1, 1999, shall continue to be licensed.

(2)(a) The board shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a training course.

(b) Such rules shall provide:

(i) That the practice of an osteopathic physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each osteopathic physician assistant shall practice osteopathic medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physicians at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(3) Applicants for licensure shall file an application with the board on a form prepared by the secretary with the approval of the board, detailing the education, training, and experience of the physician assistant and such other information as the board may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of twenty-five dollars per year may be charged on each license renewal or issuance of a new license to be collected by the department of health for physician assistant participation in an impaired practitioner program. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the board and is eligible to take the examination approved by the board;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing osteopathic medicine as an osteopathic physician assistant with reasonable skill and safety. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice as an osteopathic physician assistant.

(4) The board may approve, deny, or take other disciplinary action upon the application for a license as provided in the uniform disciplinary act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280.

Passed the Senate March 9, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 128

[Senate Bill 5829]

OCCUPATIONAL AND PHYSICAL THERAPY—BUSINESS STRUCTURE

AN ACT Relating to professional services; and amending RCW 18.100.050 and 25.15.045.

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

Sec. 1. RCW 18.100.050 and 1997 c 390 s 3 are each amended to read as follows:

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

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

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

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

(5)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own stock in and render their individual professional services through one professional service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are regulated under chapters 18.59 and 18.74 RCW may own stock in and render their individual professional services through one professional service corporation formed for the sole purpose of providing professional services within their respective scope of practice.

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

Sec. 2. RCW 25.15.045 and 1998 c 293 s 5 are each amended to read as follows:

(1) A person or group of persons licensed or otherwise legally authorized to render professional services within this or any other 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. Persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

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

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

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

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

(4) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional

Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC" 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." or "PLLC."

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

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

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

(6)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own membership interests in and render their individual professional services through one limited liability company and are to be considered, for the purpose of forming a limited liability company, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are regulated under chapters 18.59 and 18.74 RCW may own membership interests in and render their individual professional services through one limited liability company formed for the sole purpose of providing professional services within their respective scope of practice.

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

Passed the Senate March 12, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 129

[Engrossed Substitute Senate Bill 5712]

MOTEL LIQUOR LICENSES

AN ACT Relating to motel liquor licenses; and amending RCW 66.24.540.

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

Sec. 1. RCW 66.24.540 and 1997 c 321 s 34 are each amended to read as follows:

There shall be a retailer's license to be designated as a motel license. The motel license may be issued to a motel ~~((that))~~ regardless of whether it holds ~~((no))~~ any other class of license under this title. No license may be issued to a motel offering rooms to its guests on an hourly basis. The license authorizes the licensee to:

(1) Sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms.

(a) Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars. ~~((The board shall charge a reasonable fee for this license.))~~

(b) All spirits to be sold under the license must be purchased from the board.

(c) The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar.

(2) Provide without additional charge, to overnight guests of the motel, beer and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited. All beer and wine service must be done by an alcohol server as defined in RCW 66.20.300 and comply with RCW 66.20.310.

The annual fee for a motel license is five hundred dollars.

"Motel" as used in this section means a ~~((facility or place offering three or more self-contained units designated by number, letter, or some other method of identification to travelers and transient guests))~~ transient accommodation licensed under chapter 70.62 RCW.

As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010.

Passed the Senate March 17, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 130

[Senate Bill 5777]

PAYMENTS FOR DENTURIST SERVICES

AN ACT Relating to payment for denturist services; and amending RCW 48.44.026.

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

Sec. 1. RCW 48.44.026 and 1994 sp.s. c 9 s 732 are each amended to read as follows:

Checks in payment for claims pursuant to any health care service contract for health care services provided by persons licensed or regulated under chapters 18.25, 18.29, 18.30, 18.32, 18.53, 18.57, 18.64, 18.71, 18.73, 18.74, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners, where the provider is not a participating provider under a contract with the health care service contractor, shall be made out to both the provider and the enrolled participant with the provider as the first named payee, jointly, to require endorsement by each: **PROVIDED**, That payment shall be made in the single name of the enrolled participant if the enrolled participant as part of his or her claim furnishes evidence of prepayment to the health care service provider: **AND PROVIDED FURTHER**, That nothing in this section shall preclude a health care service contractor from voluntarily issuing payment in the single name of the provider.

Passed the Senate March 13, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 131

[Engrossed Senate Bill 5843]

HOUSING FINANCE COMMISSION—PLAN AND BONDS

AN ACT Relating to the housing finance commission; and amending RCW 43.180.070 and 43.180.160.

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

Sec. 1. RCW 43.180.070 and 1983 c 161 s 7 are each amended to read as follows:

The commission shall adopt a general plan of housing finance objectives to be implemented by the commission during the period of the plan. ~~((The commission shall adopt a plan no later than December 15, 1983.))~~ The commission may exercise the powers authorized under this chapter prior to the adoption of the initial plan. In developing the plan, the commission shall consider and set objectives for:

- (1) The use of funds for single-family and multifamily housing;
- (2) The use of funds for new construction, rehabilitation, including refinancing of existing debt, and home purchases;

(3) The housing needs of low-income and moderate-income persons and families, and of elderly or mentally or physically handicapped persons;

(4) The use of funds in coordination with federal, state, and local housing programs for low-income persons;

(5) The use of funds in urban, rural, suburban, and special areas of the state;

(6) The use of financing assistance to stabilize and upgrade declining urban neighborhoods;

(7) The use of financing assistance for economically depressed areas, areas of minority concentration, reservations, and in mortgage-deficient areas;

(8) The geographical distribution of bond proceeds so that the benefits of the housing programs provided under this chapter will be available to address demand on a fair basis throughout the state;

(9) The use of financing assistance for implementation of cost-effective energy efficiency measures in dwellings.

The plan shall include an estimate of the amount of bonds the commission will issue during the term of the plan and how bond proceeds will be expended.

The plan shall be adopted by resolution of the commission following at least one public hearing thereon, notice of which shall be made by mailing to the clerk of the governing body of each county and by publication in the Washington State Register no more than forty and no less than twenty days prior to the hearing. A draft of the plan shall be made available not less than thirty days prior to any such public hearing. At least every two years, the commission shall report to the legislature regarding implementation of the plan.

~~((Prior to December 31, 1983, the commission shall submit the plan to the chief clerk of the house and secretary of the senate for transmittal to and review by the appropriate standing committees.))~~ The commission may periodically update the plan. Proposed changes of the plan shall be submitted to the chief clerk of the house and secretary of the senate for transmittal to and review by the appropriate standing committees. This submittal of proposed changes shall occur at least fourteen days before final adoption of the changes by the commission.

The commission shall adopt rules designed to result in the use of bond proceeds in a manner consistent with the plan. ~~((These rules shall be adopted and in full force and effect by February 1, 1984.))~~ The commission may periodically update its rules.

~~((The commission is not required to adopt a plan or rules for the use of the proceeds of bonds issued prior to February, 1984.))~~ This section is designed to deal only with the use of bond proceeds and nothing in this section shall be construed as a limitation on the commission's authority to issue bonds.

Sec. 2. RCW 43.180.160 and 1996 c 310 s 2 are each amended to read as follows:

The total amount of outstanding indebtedness of the commission may not exceed ~~((two))~~ three billion dollars at any time. The calculation of outstanding indebtedness shall include the initial principal amount of an issue and shall not

include interest that is either currently payable or that accrues as a part of the face amount of an issue payable at maturity or earlier redemption. Outstanding indebtedness shall not include notes or bonds as to which the obligation of the commission has been satisfied and discharged by refunding or for which payment has been provided by reserves or otherwise.

Passed the Senate March 16, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 132

[Substitute Senate Bill 5746]

MULTIPLE-UNIT DWELLINGS—TAX EXEMPTION

AN ACT Relating to the exemption for new and rehabilitated multiple-unit dwellings in urban centers; and amending RCW 84.14.020 and 84.14.050.

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

Sec. 1. RCW 84.14.020 and 1995 c 375 s 5 are each amended to read as follows:

(1) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, for ten successive years beginning January 1 of the year immediately following the calendar year ((after)) of issuance of the certificate of tax exemption eligibility. However, the exemption does not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(2) In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to the submission of the application required under this chapter. The incentive provided by this chapter is in addition to any other incentives, tax credits, grants, or other incentives provided by law.

(3) This chapter does not apply to increases in assessed valuation made by the assessor on nonqualifying portions of building and value of land nor to increases made by lawful order of a county board of equalization, the department of revenue, or a county, to a class of property throughout the county or specific area of the county to achieve the uniformity of assessment or appraisal required by law.

Sec. 2. RCW 84.14.050 and 1997 c 429 s 43 are each amended to read as follows:

An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner shall secure from the governing authority or duly authorized agent, before commencement of rehabilitation improvements or new construction,

verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated multifamily housing, the owner shall apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested exemption including information indicated on the application form or in the guidelines;

(b) A description of the project and site plan, including the floor plan of units and other information requested;

(c) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be ~~((made on or before April 1 of each year, and must be))~~ accompanied by the application fee, if any, required under RCW 84.14.080. The governing authority may permit the applicant to revise an application before final action by the governing authority.

Passed the Senate March 11, 1999.

Passed the House April 9, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 133

[Second Substitute Senate Bill 5766]

LONG-TERM CARE OMBUDSMAN—DUTIES

AN ACT Relating to the long-term care ombudsman program; amending RCW 43.190.060; adding a new section to chapter 43.190 RCW; and declaring an emergency.

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

Sec. 1. RCW 43.190.060 and 1995 1st sp.s. c 18 s 33 are each amended to read as follows:

A long-term care ombudsman shall:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to administrative action, inaction, or decisions which may adversely affect the health, safety, welfare, and rights of these individuals;

(2) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to long-term care facilities in this state;

(3) Provide information as appropriate to residents, resident representatives, and others regarding the rights of residents, and to public agencies regarding the problems of individuals residing in long-term care facilities; and

(4) Provide for training volunteers and promoting the development of citizen organizations to participate in the ombudsman program. ~~((A volunteer long-term care ombudsman shall be able to identify and resolve problems regarding the care of residents in long-term care facilities and to assist such residents in the assertion of their civil and human rights. However, volunteers shall not be used for complaint investigations but may engage in fact-finding activities to determine whether a formal complaint should be submitted to the department.))~~ A trained volunteer long-term care ombudsman, in accordance with the policies and procedures established by the state long-term care ombudsman program, shall inform residents, their representatives, and others about the rights of residents, and may identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to action, inaction, or decisions, that may adversely affect the health, safety, welfare, and rights of these individuals.

Nothing in chapter . . . Laws of 1999 (this act) shall be construed to empower the state long-term care ombudsman or any local long-term care ombudsman with statutory or regulatory licensing or sanctioning authority.

NEW SECTION. Sec. 2. A new section is added to chapter 43.190 RCW to read as follows:

A local long-term care ombudsman, including a trained volunteer long-term care ombudsman, shall have the duties and authority set forth in the federal older Americans act (42 U.S.C. Sec. 3058 et seq.) for local ombudsmen. The state long-term care ombudsman and representatives of the office of the state long-term care ombudsman, shall have the duties and authority set forth in the federal older Americans act for the state long-term care ombudsman and representatives of the office of the state long-term care ombudsman.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate March 15, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 134

[Senate Bill 5986]

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM—DUTY
CONNECTED DEATH BENEFITS

AN ACT Relating to duty connected death benefits under the law enforcement officers' and fire fighters' retirement system, plan 1; amending RCW 41.26.160; adding a new section to chapter 41.26 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of sections 1 through 4 of this act is to clarify that the intent of the legislature in enacting RCW 41.26.160, insofar as that section provides benefits to members or surviving spouses for deaths incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees or surviving spouses for personal injuries or deaths incurred in the course of employment. Accordingly, this act amends and divides RCW 41.26.160 into two separate sections. Section 2 of this act clarifies and emphasizes the legislature's intent that the death benefits granted by RCW 41.26.160, as amended, are granted only to those members who die or become disabled by any injury or incapacity that is incurred in the line of duty. Section 3 of this act continues to provide death retirement benefits to members or surviving spouses for deaths not incurred in the line of duty.

Sec. 2. RCW 41.26.160 and 1991 sp.s. c 11 s 5 are each amended to read as follows:

(1) In the event of the duty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on duty connected disability leave or retired(~~(-whether)~~) for duty connected disability (~~(or service)~~), the surviving spouse shall become entitled to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for (~~(service or)~~) duty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), (~~(as now or hereafter amended)~~;) subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the duty connected death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for (~~(service or)~~) duty connected disability, the surviving

spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty, then if he or she was married at the time he or she was disabled, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's duty connected death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), ~~((as now or hereafter amended;))~~ there shall be paid to the legal heirs of ~~((said))~~ the member the excess, if any, of accumulated contributions of ~~((said))~~ the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of ~~((said))~~ the member.

(5) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), ~~((as now or hereafter amended;))~~ payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(6) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

NEW SECTION. Sec. 3. A new section is added to chapter 41.26 RCW under the subchapter heading "plan 1" to read as follows:

(1) In the event of the nonduty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on disability leave or retired, whether for nonduty connected disability or service, the surviving spouse shall become entitled to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for service or nonduty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the

care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(6) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

NEW SECTION. Sec. 4. The provisions of section 2 of this act apply retrospectively to all line of duty death retirement allowances granted under chapter 41.26 RCW prior to the effective date of this act.

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

Passed the Senate March 9, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 135

[Senate Bill 5987]

**LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM--
WITHDRAWAL OF ACCUMULATED CONTRIBUTIONS**

AN ACT Relating to the withdrawal of accumulated contributions under the law enforcement officers' and fire fighters' retirement system; amending RCW 41.26.470; and creating a new section.

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

Sec. 1. RCW 41.26.470 and 1995 c 144 s 18 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-five.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.26.450.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

NEW SECTION. Sec. 2. Section 1 of this act applies to any member who received a disability retirement allowance on or after February 1, 1990.

Passed the Senate March 12, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 136

[Substitute Senate Bill 6009]

DISABLED PARKING—SPECIAL IDENTIFICATION CARDS

AN ACT Relating to nonphoto identification cards for disabled parking; and amending RCW 46.16.381.

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

Sec. 1. RCW 46.16.381 and 1998 c 294 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) The applications for disabled parking permits and temporary disabled parking permits are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's signature and immediately below the applicant's signature: "A disabled parking permit may be issued only for a medical necessity that severely affects mobility (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) 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 and an individual serial number, along with a special identification card bearing the ((~~photograph~~)) name(;) and date of birth of the person to whom the placard is issued, and the placard's serial number. The special identification card shall be issued no later than January 1, 2000, to all persons who are issued parking placards, including those issued for temporary disabilities, and special disabled parking license plates. By July 1, 2001, the department shall incorporate a photograph of the holder of the disabled parking permit into all special identification cards issued after that date. The department, in conjunction with the governor's committee on disability issues and employment,

shall assess options for issuing a photo identification card to each person who qualifies for a permanent parking placard, a temporary parking placard, or a special disabled parking license plate and report findings to the legislative transportation committee no later than December 31, 2000. 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 upon submitting a written request to the department. 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, 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, 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, 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.

(4) 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.

(5) 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. 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 permanent

parking placard and ((photo)) identification card of a disabled person shall be renewed at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and ((photo)) identification card must be immediately surrendered to the department. The department shall match and purge its disabled permit data base with available death record information at least every twelve months.

(6) Each person who has been issued a permanent disabled parking permit on or before July 1, 1998, must renew the permit no later than July 1, 2003, subject to a schedule to be set by the department, or the permit will expire.

(7) Additional fees shall not be charged for the issuance of the special placards or the ((photo)) identification cards. 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.

(8) Any unauthorized use of the special placard, special license plate, or ((photo)) identification card is a traffic infraction with a monetary penalty of two hundred fifty dollars.

(9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to make inaccessible the access aisle located next to a space reserved for physically disabled persons. The clerk of the court shall report all violations related to this subsection to the department.

(10) It is a parking infraction, with a monetary penalty of two hundred 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 nonmetered, on-street parking places reserved for physically disabled persons may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards. All time restrictions must be clearly posted.

(11) The penalties imposed under subsections (9) and (10) of this section 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.

(12) Except as provided by subsection (2) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person

willfully to obtain a special license plate, placard, or ((photo)) identification card in a manner other than that established under this section.

(13)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's ((photo)) identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(14) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community service for a nonprofit organization that serves the disabled community or persons having disabling diseases; or

(b) Any other community service that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(15) The court may not suspend more than one-half of any fine imposed under subsection (8), (9), (10), or (12) of this section.

Passed the Senate March 15, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 137

[Senate Bill 6019]

CROP CREDIT ASSOCIATIONS—REPEALED

AN ACT Relating to crop credit associations; and repealing RCW 31.16.020, 31.16.025, 31.16.028, 31.16.030, 31.16.040, 31.16.050, 31.16.060, 31.16.070, 31.16.080, 31.16.090, 31.16.100, 31.16.110, 31.16.120, 31.16.130, 31.16.150, 31.16.160, 31.16.170, 31.16.180, 31.16.190, 31.16.200, 31.16.210, 31.16.220, 31.16.230, 31.16.240, 31.16.250, 31.16.255, 31.16.260, 31.16.270, 31.16.280, 31.16.290, 31.16.300, 31.16.310, 31.16.320, 31.16.900, and 31.16.910.

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 31.16.020 and 1921 c 121 s 2;

(2) RCW 31.16.025 and 1988 c 25 s 6 & 1921 c 121 s 3;

- (3) RCW 31.16.028 and 1921 c 121 s 4;
- (4) RCW 31.16.030 and 1988 c 25 s 7 & 1921 c 121 s 5;
- (5) RCW 31.16.040 and 1981 c 302 s 24 & 1921 c 121 s 6;
- (6) RCW 31.16.050 and 1921 c 121 s 7;
- (7) RCW 31.16.060 and 1921 c 121 s 8;
- (8) RCW 31.16.070 and 1981 c 302 s 25 & 1921 c 121 s 9;
- (9) RCW 31.16.080 and 1921 c 121 s 10;
- (10) RCW 31.16.090 and 1921 c 121 s 11;
- (11) RCW 31.16.100 and 1921 c 121 s 12;
- (12) RCW 31.16.110 and 1921 c 121 s 13;
- (13) RCW 31.16.120 and 1921 c 121 s 14;
- (14) RCW 31.16.130 and 1921 c 121 s 15;
- (15) RCW 31.16.150 and 1921 c 121 s 16;
- (16) RCW 31.16.160 and 1921 c 121 s 17;
- (17) RCW 31.16.170 and 1921 c 121 s 18;
- (18) RCW 31.16.180 and 1921 c 121 s 19;
- (19) RCW 31.16.190 and 1921 c 121 s 20;
- (20) RCW 31.16.200 and 1921 c 121 s 21;
- (21) RCW 31.16.210 and 1921 c 121 s 22;
- (22) RCW 31.16.220 and 1921 c 121 s 23;
- (23) RCW 31.16.230 and 1988 c 25 s 8 & 1921 c 121 s 24;
- (24) RCW 31.16.240 and 1921 c 121 s 25;
- (25) RCW 31.16.250 and 1921 c 121 s 26;
- (26) RCW 31.16.255 and 1921 c 121 s 27;
- (27) RCW 31.16.260 and 1921 c 121 s 28;
- (28) RCW 31.16.270 and 1921 c 121 s 29;
- (29) RCW 31.16.280 and 1921 c 121 s 30;
- (30) RCW 31.16.290 and 1921 c 121 s 31;
- (31) RCW 31.16.300 and 1921 c 121 s 32;
- (32) RCW 31.16.310 and 1988 c 25 s 9 & 1921 c 121 s 33;
- (33) RCW 31.16.320 and 1921 c 121 s 34;
- (34) RCW 31.16.900 and 1921 c 121 s 1; and
- (35) RCW 31.16.910 and 1921 c 121 s 35.

Passed the Senate March 13, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 138

[Engrossed Substitute Senate Bill 6020]

DRIVER'S LICENSES—SOCIAL SECURITY NUMBER REQUIREMENT

AN ACT Relating to recording of social security numbers on applications for licenses to assist in child support enforcement; amending RCW 26.23.150; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature declares that enhancing the effectiveness of child support enforcement is an essential public policy goal, but that the use of social security numbers on licenses is an inappropriate, intrusive, and offensive method of improving enforceability. The legislature also finds that, in 1997, the federal government threatened sanction by withholding of funds for programs for poor families if states did not comply with a federal requirement to use social security numbers on licenses, thus causing the legislature to enact such provisions under protest. Since that time, the federal government has delayed implementation of the noncommercial driver's license requirement until October 1, 2000.

The legislature will require compliance with federal law in this matter only at such time and in the event that the federal government actually implements the requirement of using social security numbers on noncommercial driver's license applications. Therefore, the legislature intends to delay the implementation of provisions enacted in 1998 requiring social security numbers be recorded on all applications for noncommercial driver's licenses.

Sec. 2. RCW 26.23.150 and 1998 c 160 s 7 are each amended to read as follows:

In order to assist in child support enforcement as required by federal law, all applicants for an original, replacement, or renewal of a professional license, commercial driver's license, occupational license, or recreational license must furnish the licensing agency with the applicant's social security number, which shall be recorded on the application. No applicant for an original, replacement, or renewal noncommercial driver's license is required to furnish the licensing agency with the applicant's social security number for purposes of assisting in child support enforcement prior to the time necessary to comply with the federal deadline. The licensing agencies collecting social security numbers shall not display the social security number on the license document. Social security numbers collected by licensing agencies shall not be disclosed except as required by state or federal law or under RCW 26.23.120.

Passed the Senate March 10, 1999.

Passed the House April 8, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 139

[Senate Bill 5021]

DEMONSTRATION FARMS—PROPERTY TAX EXEMPTION

AN ACT Relating to the property taxation of nonprofit organizations providing demonstration farms with research and extension facilities, public agricultural museums, and educational tour sites; amending RCW 84.34.108; reenacting and amending RCW 84.36.805 and 84.36.810; and adding a new section to chapter 84.36 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 84.36 RCW to read as follows:

(1) All real and personal property owned by a nonprofit organization, corporation, or association to provide a demonstration farm with research and extension facilities, a public agricultural museum, and an educational tour site, which is used by a state university for agricultural research and education programs, is exempt from property taxation. This exemption includes all real and personal property that may be used in the production and sale of agricultural products, not to exceed fifty acres, if the income is used to further the purposes of the organization, corporation, or association.

(2) To qualify for this exemption:

(a) The nonprofit organization, corporation, or association must be qualified for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)); and

(b) The property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

Sec. 2. RCW 84.34.108 and 1992 c 69 s 12 are each amended to read as follows:

(1) When land has once been classified under this chapter, a notation of such classification shall be made each year upon the assessment and tax rolls and such land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of such classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of such classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW (~~82.45.120, as now or hereafter amended~~) 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation

calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of such land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether such land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Within thirty days after such removal of all or a portion of such land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to full market value on the date of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (5) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of such an additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land", "farm and agricultural land", or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of such additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which such additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(4) Additional tax, applicable interest, and penalty, shall become a lien on such land which shall attach at the time such land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with

which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as hereafter amended. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The additional tax, applicable interest, and penalty specified in subsection (3) of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of such land;

(e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections: PROVIDED, That at such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (3) of this section shall be imposed; ((or))

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(d); or

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.

Sec. 3. RCW 84.36.805 and 1998 c 311 s 25, 1998 c 202 s 3, and 1998 c 184 s 2 are each reenacted and amended to read as follows:

(1) In order to ((be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, 84.36.550, and 84.36.042)) qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations ((shall)) must satisfy the ((following)) conditions(+) in this section.

~~((+))~~ (2) The property ~~((is))~~ must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted~~((;))~~.

~~((2))~~ (3) The property ~~((is))~~ must be irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption ~~((pursuant to RCW 84.36.035, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, or 84.36.042 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060))~~ under this chapter for leased property, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption~~((;))~~.

~~((3))~~ (4) The facilities and services ~~((are))~~ must be available to all regardless of race, color, national origin or ancestry~~((;))~~.

~~((4))~~ (5) The organization, association, or corporation ~~((is))~~ must be duly licensed or certified where such licensing or certification is required by law or regulation~~((;))~~.

~~((5))~~ (6) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status~~((;))~~.

~~((6))~~ (7) The ~~((director of the))~~ department ~~((of revenue))~~ shall have access to its books in order to determine whether ~~((such))~~ the nonprofit organization, association, or corporation is exempt from taxes ~~((within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and 84.36.042))~~ under this chapter.

(8) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, and 84.36.260.

Sec. 4. RCW 84.36.810 and 1998 c 311 s 26 and 1998 c 202 s 4 are each reenacted and amended to read as follows:

(1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.042, 84.36.043, 84.36.046, 84.36.050, 84.36.060, 84.36.550, and ~~((84.36.042))~~ section 1 of this act, 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. ~~((Where))~~ If the property has been granted an exemption for more than ten consecutive 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))~~ loses 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))~~ this 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 leased property that had been exempt under ~~((RCW 84.36.040, 84.36.041, 84.36.043, 84.36.046, 84.36.060, or 84.36.042))~~ this chapter; or

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(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(8)).~~

Passed the Senate March 10, 1999.

Passed the House April 12, 1999.

Approved by the Governor April 28, 1999.

Filed in Office of Secretary of State April 28, 1999.

CHAPTER 140

[House Bill 1050]

COAL MINE SAFETY INSPECTIONS—REPEALED

AN ACT Relating to coal mine safety inspections; and repealing RCW 43.22.200 and 43.22.210.

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 43.22.200 and 1994 c 164 s 8, 1973 1st ex.s. c 52 s 5, & 1965 c 8 s 43.22.200; and

(2) RCW 43.22.210 and 1994 c 164 s 9, 1989 c 12 s 14, 1973 1st ex.s. c 52 s 6, & 1965 c 8 s 43.22.210.

Passed the House March 9, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 141

[Engrossed House Bill 1067]

STATUTORY DOUBLE JEOPARDY

AN ACT Relating to statutory double jeopardy; and amending RCW 10.43.040.

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

Sec. 1. RCW 10.43.040 and 1909 c 249 s 19 are each amended to read as follows:

Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, ~~((upon a criminal prosecution))~~ in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or country based upon the same act or omission.

Passed the House March 10, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 142

[Substitute House Bill 1069]

MULTIPLE DEATH INVESTIGATIONS—EXPENDITURE OF FUNDS

AN ACT Relating to investigations of multiple deaths; and amending RCW 43.103.090.

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

Sec. 1. RCW 43.103.090 and 1995 c 398 s 8 are each amended to read as follows:

The council may:

(1) Meet at such times and places as may be designated by a majority vote of the council members or, if a majority cannot agree, by the chair;

(2) Adopt rules governing the council and the conduct of its meetings;

(3) Require reports from the state toxicologist on matters pertaining to the toxicology laboratory;

(4) Require reports from the chief of the Washington state patrol on matters pertaining to the crime laboratory;

(5) Be actively involved in the preparation of the crime laboratory and toxicology laboratory budgets and shall approve the crime laboratory and toxicology laboratory budgets prior to their formal submission to the office of financial management pursuant to RCW 43.88.030;

(6) Authorize the expenditure of up to two hundred fifty thousand dollars per biennium from the council's death investigations account appropriation for the purpose of assisting local jurisdictions in the investigation of multiple deaths involving unanticipated, extraordinary, and catastrophic events, or involving multiple jurisdictions. The council shall adopt rules consistent with this subsection for the purposes of authorizing expenditure of the funds:

(7) Do anything, necessary or convenient, which enables the council to perform its duties and to exercise its powers;

~~((7))~~ (8) Appoint a toxicologist as state toxicologist to serve at the pleasure of the council; and

~~((8))~~ (9) Set the salary for the state toxicologist.

Passed the House March 12, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 143

[House Bill 1142]

TECHNICAL CORRECTIONS TO CRIMINAL LAWS

AN ACT Relating to technical corrections to various criminal laws; amending RCW 9.04.070, 9.41.042, 9.41.185, 9.44.080, 9.46.0351, 9.46.070, 9.46.198, 9.68A.120, 9.91.060, 9.94A.050, 9.94A.127, 9.94A.130, 9.94A.160, 9.94A.170, 9.94A.180, 9.94A.370, 9.95.030, 9.95.060, 9.95.070, 9.95.090, 9.95.110, 9.95.120, 9.95.122, 9.95.123, 9.95.124, 9.95.150, 9.95.160, 9.95.170, 9.95.260, 9.95.265, 9.95.280, 9.95.300, 9.98.010, 9A.44.060, 9A.46.110, 9A.56.010, 9A.56.110, 9A.60.010,

9A.64.020, 9A.83.010, 10.05.030, 10.05.150, 10.05.160, 10.22.010, 10.66.050, 10.66.100, 10.73.040, 10.77.010, 10.98.030, 10.98.040, 10.98.110, and 10.98.160; and reenacting and amending RCW 9A.82.010.

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

Sec. 1. RCW 9.04.070 and 1961 c 189 s 3 are each amended to read as follows:

Any person who violates any order or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both.

~~((RCW 9.01.090 shall not be applicable to the terms of RCW 9.04.050 through 9.04.080 and no penalty or remedy shall result from a violation of RCW 9.04.050 through 9.04.080 except as expressly provided herein.))~~

EXPLANATORY NOTE:

RCW 9.01.090 was repealed by 1975 1st ex.s. c 260 s 9A.92.010.

Sec. 2. RCW 9.41.042 and 1994 sp.s. c 7 s 403 are each amended to read as follows:

RCW 9.41.040(1)((e)) (b)(iii) shall not apply to any person under the age of eighteen years who is:

- (1) In attendance at a hunter's safety course or a firearms safety course;
- (2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;
- (3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;
- (4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;
- (5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;
- (6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;
- (7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;
- (8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty.

EXPLANATORY NOTE:

RCW 9.41.040 was amended by 1995 c 129 s 16, changing subsection (1)(e) to subsection (1)(b)(iv); and was subsequently amended by 1996 c 295 s 2, changing subsection (1)(b)(iv) to subsection (1)(b)(iii).

Sec. 3. RCW 9.41.185 and 1988 c 36 s 3 are each amended to read as follows:

The use of "coyote getters" or similar spring-triggered shell devices shall not constitute a violation of any of the laws of the state of Washington when the use of such "coyote getters" is authorized by the state department of agriculture and/or the state department of fish and wildlife in cooperative programs with the United States Fish and Wildlife Service, for the purpose of controlling or eliminating coyotes harmful to livestock and game animals on range land or forest areas.

EXPLANATORY NOTE:

Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

Sec. 4. RCW 9.44.080 and 1909 c 249 s 337 are each amended to read as follows:

In a situation not covered by RCW 29.79.440, 29.79.490, 29.82.170, or 29.82.220, every person who shall wilfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his own name to or withdraw his name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his name to such petition shall wilfully subscribe to any false statement concerning his age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor.

EXPLANATORY NOTE:

RCW 29.79.440 and 29.79.490 specifically apply to state initiative and referendum petitions. RCW 29.82.170 and 29.82.220 specifically apply to recall petitions.

Sec. 5. RCW 9.46.0351 and 1987 c 4 s 34 are each amended to read as follows:

(1) The legislature hereby authorizes any bona fide charitable or nonprofit organization which is licensed pursuant to RCW 66.24.400, and its officers and employees, to allow the use of the premises, furnishings, and other facilities not gambling devices of such organization by members of the organization, and

members of a chapter or unit organized under the same state, regional, or national charter or constitution, who engage as players in the following types of gambling activities only:

(a) Social card games (~~as defined in RCW 9.46.0281 (1) through (4)~~); and

(b) Social dice games, which shall be limited to contests of chance, the outcome of which are determined by one or more rolls of dice.

(2) Bona fide charitable or nonprofit organizations shall not be required to be licensed by the commission in order to allow use of their premises in accordance with this section. However, the following conditions must be met:

(a) No organization, corporation, or person shall collect or obtain or charge any percentage of or shall collect or obtain any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That a player may collect his or her winnings; and

(b) No organization, corporation, or person shall collect or obtain any money or thing of value from, or charge or impose any fee upon, any person which either enables him or her to play or results in or from his or her playing: PROVIDED; That this subsection shall not preclude collection of a membership fee which is unrelated to participation in gambling activities authorized under this section.

EXPLANATORY NOTE:

RCW 9.46.0281 was repealed by 1997 c 118 s 3. Later enactment of the definition in RCW 9.46.0282 applies to chapter 9.46 generally, and makes the reference back unnecessary.

Sec. 6. RCW 9.46.070 and 1993 c 344 s 1 are each amended to read as follows:

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the

commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission

and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission may require fingerprinting and background checks on any persons seeking licenses under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo. In establishing limitations pursuant to this subsection the commission shall take into account (i) the nature, character, and scope of the activities of the licensee; (ii) the source of all other income of the licensee; and (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation, or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW ((9.46.028+(4))) 9.46.0282;

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter; and

(20) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

EXPLANATORY NOTE:

RCW 9.46.0281 was repealed by 1997 c 118 s 3. Later enactment, see RCW 9.46.0282.

Sec. 7. RCW 9.46.198 and 1977 ex.s. c 326 s 14 are each amended to read as follows:

Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under RCW 9.46.070(~~((+6)))~~ (17) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by not more than one year in the county jail or a fine of not more than five thousand dollars, or both.

EXPLANATORY NOTE:

RCW 9.46.070 was amended by 1981 c 139 s 3, renumbering subsection (16) as (17).

Sec. 8. RCW 9.68A.120 and 1984 c 262 s 11 are each amended to read as follows:

The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance 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.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) 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.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of

producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When 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 that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the ~~((criminal justice training))~~ public safety and education account established under RCW ~~((43.101.210 which shall be appropriated by law to the Washington state criminal justice training commission))~~ 43.08.250 and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law.

EXPLANATORY NOTE:

The collection and distribution of fines and forfeitures was extensively revised by 1984 c 258 ss 301 through 340. RCW 43.101.210 was repealed by section 339 of that act, and various criminal justice-related accounts were consolidated in the public safety and education account.

Sec. 9. RCW 9.91.060 and 1951 c 270 s 17 are each amended to read as follows:

Every person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, who shall leave such children in a parked automobile unattended by an adult while such person enters a tavern or other premises where vinous~~((+))~~, spirituous~~((+))~~, or malt liquors are dispensed for consumption on the premises shall be guilty of a gross misdemeanor.

EXPLANATORY NOTE:

The bracketed commas had been omitted in the 1951 enactment.

Sec. 10. RCW 9.94A.050 and 1982 c 192 s 3 are each amended to read as follows:

The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the indeterminate sentence review board (~~(of prison terms and paroles)~~), administrator for the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 11. RCW 9.94A.127 and 1990 c 3 s 601 are each amended to read as follows:

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case other than sex offenses as defined in RCW 9.94A.030(~~((29))~~) (33) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(~~((29))~~) (33) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

EXPLANATORY NOTE:

RCW 9.94A.030 was amended by 1994 c 1 s 3, changing subsection (29) to subsection (31). RCW 9.94A.030 was subsequently amended by 1995 c 108 s 1, changing subsection (31) to subsection (33).

Sec. 12. RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read as follows:

The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.120((7)) (8)(a), the special sexual offender sentencing alternative, whose sentence may be suspended.

EXPLANATORY NOTE:

RCW 9.94A.120 was amended by 1995 c 108 s 3, changing subsection (7) to subsection (8).

Sec. 13. RCW 9.94A.160 and 1984 c 246 s 1 are each amended to read as follows:

If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

~~(2) ((If the emergency occurs prior to July 1, 1988, call the board of prison terms and paroles into an emergency meeting for the purpose of evaluating its guidelines and procedures for release of prisoners under its jurisdiction. The board shall adopt guidelines for the reduction of inmate population to be used in the event the governor calls the board into an emergency meeting under this section. The board shall not, under this subsection, reduce the prison term of an inmate serving a mandatory minimum term under RCW 9.95.040, an inmate confined for treason, an inmate confined for any violent offense as defined by RCW 9.94A.030, or an inmate who has been found to be a sexual psychopath under chapter 71.06 RCW. In establishing these guidelines, the board shall give priority to sentence reductions for inmates confined for nonviolent offenses, inmates who are within six months of a scheduled parole, and inmates with the best records of conduct during confinement. The board shall consider the public safety, the detrimental effect of~~

~~overcrowding upon inmate rehabilitation, and the best allocation of limited correctional facility resources. Guidelines adopted under this subsection shall be submitted to the senate institutions and house of representatives social and health services committees for their review. This subsection does not require the board to reduce inmate population to or below any certain number. The board may also take any other action authorized by law to modify the terms of prisoners under its jurisdiction;~~

—(3)) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

EXPLANATORY NOTE:

Subsection (2) is, by its own terms, obsolete.

Sec. 14. RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read as follows:

(1) A term of confinement, including community custody, ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented him or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) A term of supervision, including postrelease supervision ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is later found not to have violated a condition or requirement of supervision, time spent in confinement due to such detention shall not toll ~~((to the))~~ the period of supervision.

(4) For confinement or supervision sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

EXPLANATORY NOTE:

Corrects erroneous wording.

Sec. 15. RCW 9.94A 180 and 1991 c 181 s 4 are each amended to read as follows:

(1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030~~((23))~~ (26) and 9.94A.135. The offender shall be required as a

condition of partial confinement to report to the facility at designated times. An offender may be required to comply with crime-related prohibitions during the period of partial confinement.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the state department of corrections.

EXPLANATORY NOTE:

RCW 9.94A.030 was amended by 1994 c 1 s 3, changing subsection (23) to subsection (24). RCW 9.94A.030 was subsequently amended by 1995 c 108 s 1, changing subsection (24) to subsection (26).

Sec. 16. RCW 9.94A.370 and 1996 c 248 s 1 are each amended to read as follows:

(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) ~~((e), (d), (f), and (g))~~ (d), (e), (g), and (h).

EXPLANATORY NOTE:

RCW 9.94A.390 was amended by 1996 c 248 s 2 and by 1996 c 121 s 1, changing subsection (2)(c), (d), (f), and (g) to subsection (2)(d), (e), (g), and (h), respectively.

Sec. 17. RCW 9.95.030 and 1984 c 114 s 2 are each amended to read as follows:

At the time the convicted person is transported to the custody of the department of corrections, the indeterminate sentence review board (~~(of prison terms and paroles)~~) shall obtain from the sentencing judge and the prosecuting attorney, a statement of all the facts concerning the convicted person's crime and any other information of which they may be possessed relative to him, and the sentencing judge and the prosecuting attorney shall furnish the board (~~(of prison terms and paroles)~~) with such information. The sentencing judge and prosecuting attorney shall indicate to the board (~~(of prison terms and paroles)~~), for its guidance, what, in their judgment, should be the duration of the convicted person's imprisonment.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986. See RCW 9.95.001.

Sec. 18. RCW 9.95.060 and 1988 c 202 s 15 are each amended to read as follows:

When a convicted person seeks appellate review of his or her conviction and is at liberty on bond pending the determination of the proceeding by the supreme court or the court of appeals, credit on his or her sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified to the department of corrections, the (~~(Washington state)~~) indeterminate sentence review board (~~(of prison terms and paroles)~~), and the prosecuting attorney of the county in which such convicted person was convicted and sentenced, by the sheriff of such county. If such convicted person does not seek review of the conviction, but is at liberty for a period of time subsequent to the signing of the judgment and sentence, or becomes a fugitive, credit on his sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified as provided in this section. In all other cases, credit on a sentence will begin from the date the judgment and sentence is signed by the court.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 19. RCW 9.95.070 and 1955 c 133 s 8 are each amended to read as follows:

Every prisoner who has a favorable record of conduct at the penitentiary or the reformatory, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him to the satisfaction of the superintendent of the penitentiary or reformatory, and in whose behalf the superintendent of the penitentiary or reformatory files a report certifying that his conduct and work have been meritorious and recommending allowance of time credits to him, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board (~~(of prison terms and paroles)~~), be allowed time credit reductions from the term of imprisonment fixed by the board (~~(of prison terms and paroles)~~).

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 20. RCW 9.95.090 and 1955 c 133 s 10 are each amended to read as follows:

The board (~~(of prison terms and paroles)~~) shall require of every able bodied convicted person imprisoned in the penitentiary or the reformatory as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he is confined.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 21. RCW 9.95.110 and 1955 c 133 s 12 are each amended to read as follows:

The board (~~(of prison terms and paroles)~~) may permit a convicted person to leave the buildings and enclosures of the penitentiary or the reformatory on parole, after such convicted person has served the period of confinement fixed for him by the board, less time credits for good behavior and diligence in work: **PROVIDED,** That in no case shall an inmate be credited with more than one-third of his sentence as fixed by the board.

The board (~~(of prison terms and paroles)~~) may establish rules and regulations under which a convicted person may be allowed to leave the confines of the penitentiary or the reformatory on parole, and may return such person to the confines of the institution from which he was paroled, at its discretion.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 22. RCW 9.95.120 and 1981 c 136 s 37 are each amended to read as follows:

Whenever the board (~~(of prison terms and paroles)~~) or a probation and parole officer of this state has reason to believe a convicted person has breached a condition of his parole or violated the law of any state where he may then be or the rules and regulations of the board (~~(of prison terms and paroles)~~), any probation and parole officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board (~~(of prison terms and paroles)~~) by the probation and parole officer, with recommendations. The board (~~(of prison terms and paroles)~~), after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the probation and parole officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board (~~(of prison terms and paroles)~~) for his return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state probation and parole officer, or upon the written order of the board (~~(of prison terms and paroles)~~), shall not be released from custody on bail or personal recognizance, except upon approval of the board (~~(of prison terms and paroles)~~) and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he may then be, he shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he is

served with charges of the violation of conditions of his parole after his arrest and detention. The hearing shall be held before one or more members of the ((parole)) board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board ((of prison terms and paroles)) suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board ((of prison terms and paroles)) shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board ((of prison terms and paroles)) may determine advisable. Before the board ((of prison terms and paroles)) shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a penal institution.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 23. RCW 9.95.122 and 1969 c 98 s 4 are each amended to read as follows:

At any on-site parole revocation hearing the alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board ((of prison terms and paroles)).

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 24. RCW 9.95.123 and 1969 c 98 s 5 are each amended to read as follows:

In conducting on-site parole revocation hearings, the board (~~(of prison terms and paroles)~~) shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW as now or hereafter amended. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board (~~(of prison terms and paroles)~~) may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order, the witness shall be dealt with as for contempt of court.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 25. RCW 9.95.124 and 1983 c 196 s 2 are each amended to read as follows:

At all on-site parole revocation hearings the probation and parole officers of the department of corrections, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him in any criminal

prosecution. The board (~~(of prison terms and paroles)~~) shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation hearings, together with forms and instructions.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 26. RCW 9.95.150 and 1955 c 133 s 16 are each amended to read as follows:

The board (~~(of prison terms and paroles)~~) shall make all necessary rules and regulations to carry out the provisions of this chapter not inconsistent therewith, and may provide the forms of all documents necessary therefor.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 27. RCW 9.95.160 and 1955 c 133 s 17 are each amended to read as follows:

This chapter shall not limit or circumscribe the powers of the governor to commute the sentence of, or grant a pardon to, any convicted person, and the governor may cancel or revoke the parole granted to any convicted person by the board (~~(of prison terms and paroles)~~). The written order of the governor canceling or revoking such parole shall have the same force and effect and be executed in like manner as an order of the board (~~(of prison terms and paroles)~~).

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 28. RCW 9.95.170 and 1981 c 136 s 40 are each amended to read as follows:

To assist it in fixing the duration of a convicted person's term of confinement, and in fixing the condition for release from custody on parole, it shall not only be the duty of the board (~~(of prison terms and paroles)~~) to thoroughly inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The department of corrections and the institutions under its control shall make available to the board (~~(of prison terms and paroles)~~) on request its case investigations, any file or other record, in order to assist the board in developing information for carrying out the purpose of this section.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 29. RCW 9.95.260 and 1981 c 136 s 44 are each amended to read as follows:

~~((It shall be the duty of))~~ The board ~~((of prison terms and paroles))~~ shall, when requested by the governor, ~~((to))~~ pass on the representations made in support of applications for pardons for convicted persons and ~~((to))~~ make recommendations thereon to the governor.

It will be the duty of the secretary of corrections to exercise supervision over such convicted persons as have been conditionally pardoned by the governor, to the end that such persons shall faithfully comply with the conditions of such pardons. The board ~~((of prison terms and paroles))~~ shall also pass on any representations made in support of applications for restoration of civil rights of convicted persons, and make recommendations to the governor. The department of corrections shall prepare materials and make investigations requested by the board ~~((of prison terms and paroles))~~ in order to assist the board in passing on the representations made in support of applications for pardon or for the restoration of civil rights.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 30. RCW 9.95.265 and 1977 c 75 s 5 are each amended to read as follows:

The board ~~((of prison terms and paroles))~~ shall transmit to the governor and to the legislature, as often as the governor may require it, a report of its work, in which shall be given such information as may be relevant.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 31. RCW 9.95.280 and 1955 c 183 s 1 are each amended to read as follows:

The board ~~((of prison terms and paroles is hereby authorized and empowered to))~~ may deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. In any

matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 32. RCW 9.95.300 and 1955 c 183 s 3 are each amended to read as follows:

The board (~~(of prison terms and paroles is hereby authorized to)~~) may enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Sec. 33. RCW 9.98.010 and 1959 c 56 s 1 are each amended to read as follows:

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred twenty days after he shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: **PROVIDED**, That for good cause shown in open court, the prisoner or his counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board (~~(of prison terms and paroles)~~) relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the superintendent having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by (~~(registered)~~) certified mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him concerning which the superintendent has knowledge and of his right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

RCW 1.12.060 provides that whenever the use of registered mail is authorized, certified mail may be used instead.

Sec. 34. RCW 9A.44.060 and 1979 ex.s. c 244 s 3 are each amended to read as follows:

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent as defined in RCW 9A.44.010(~~(6)~~) (7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony.

EXPLANATORY NOTE:

The reference to subsection (6) of RCW 9A.44.010 is erroneous. As a result of the amendment by 1988 c 146 s 3, "consent" is defined in subsection (7) of that section.

Sec. 35. RCW 9A.46.110 and 1994 c 271 s 801 are each amended to read as follows:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private ((detective)) investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.

(5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (b) the stalking violates any protective order protecting the person being stalked; (c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (d) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.125, while stalking the person; (e) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community correction's officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (f) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(d) "Repeatedly" means on two or more separate occasions.

EXPLANATORY NOTE:

"Private detective" redesignated "private investigator" by 1995 c 277.

Sec. 36. RCW 9A.56.010 and 1998 c 236 s 1 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

~~((2))~~ (3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of," "owned by," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

~~((3))~~ ~~"Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;~~

~~(4))~~ (5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

~~((5))~~ (6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

~~((6))~~ (7) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(8) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

~~((7))~~ "Wrongfully obtains" or "exerts unauthorized control" means:

— (a) To take the property or services of another;

— (b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

— (c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where such use is unauthorized by the partnership agreement;

~~(8) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed prior to or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;~~

~~(9) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;~~

~~(10))~~ (9) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(10) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(11) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(12) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(13) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(14) "Stolen" means obtained by theft, robbery, or extortion;

~~((14))~~ (15) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

~~((15))~~ (16) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

~~((16))~~ (17) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

~~((17))~~ (18) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

~~((18) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;~~

~~(19) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle.))~~

(19) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

EXPLANATORY NOTE:

Arranges the definitions in alphabetical order to facilitate their future usage.

Sec. 37. RCW 9A.56.110 and 1983 1st ex.s. c 4 s 2 are each amended to read as follows:

"Extortion" means knowingly to obtain or attempt to obtain by threat property or services of the owner, ~~((as defined in RCW 9A.56.010(8)))~~ and specifically includes sexual favors.

EXPLANATORY NOTE:

The reference to the definition of "owner" is outdated and unnecessary, since the definitions in RCW 9A.56.110 apply throughout chapter 9A.56 RCW.

Sec. 38. RCW 9A.60.010 and 1987 c 140 s 5 are each amended to read as follows:

The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

(1) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, (~~as defined in RCW 9A.56.010(3);~~) token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;

(2) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(4) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(5) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(7) "Forged instrument" means a written instrument which has been falsely made, completed, or altered.

EXPLANATORY NOTE:

The reference to the definition of "access device" is outdated and unnecessary.

Sec. 39. RCW 9A.64.020 and 1985 c 53 s 1 are each amended to read as follows:

(1) A person is guilty of incest in the first degree if he engages in sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(2) A person is guilty of incest in the second degree if he engages in sexual contact with a person whom he knows to be related to him, either legitimately or

illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(3) As used in this section, "descendant" includes stepchildren and adopted children under eighteen years of age.

(4) As used in this section, "sexual contact" has the same meaning as in RCW ~~((9A.44.100(2)))~~ 9A.44.010.

(5) As used in this section, "sexual intercourse" has the same meaning as in RCW 9A.44.010~~((+))~~.

(6) Incest in the first degree is a class B felony.

(7) Incest in the second degree is a class C felony.

EXPLANATORY NOTE:

Corrects outdated definition reference; removes unnecessary subsection reference.

Sec. 40. RCW 9A.82.010 and 1995 c 285 s 34 and 1995 c 92 s 5 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)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

~~((2))~~ (4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by

imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

- (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;
- (f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;
- (g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- (h) Child selling or child buying, as defined in RCW 9A.64.030;
- (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (m) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (n) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (p) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (r) Leading organized crime, as defined in RCW 9A.82.060;
- (s) Money laundering, as defined in RCW 9A.83.020;
- (t) 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;
- (u) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (v) Promoting pornography, as defined in RCW 9.68.140;
- (w) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (x) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
- (cc) Commercial telephone solicitation in violation of RCW 19.158.040(1);
- (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
- (ee) Unlawful practice of law, as defined in RCW 2.48.180;

(ff) Commercial bribery, as defined in RCW 9A.68.060;

(gg) Health care false claims, as defined in RCW 48.80.030; or

(hh) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7).

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

((3)) (7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

((4)) (10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

((5)) (11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW

21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

~~((6))~~ (18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

~~((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))~~ (19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

~~((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) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;
- (g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- (h) Child selling or child buying, as defined in RCW 9A.64.030;
- (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (m) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (n) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (p) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (r) Leading organized crime, as defined in RCW 9A.82.060;
- (s) Money laundering, as defined in RCW 9A.83.020;
- (t) 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;
- (u) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (v) Promoting pornography, as defined in RCW 9.68.140;
- (w) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (x) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
- (cc) Commercial telephone solicitation in violation of RCW 19.158.040(1);

- (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
- (ee) Unlawful practice of law, as defined in RCW 2.48.180;
- (ff) Commercial bribery, as defined in RCW 9A.68.060;
- (gg) Health care false claims, as defined in RCW 48.80.030; or
- (hh) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7).

—(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)) (20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

~~((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.))~~

EXPLANATORY NOTE:

Puts twenty-one definitions in alphabetical order.

Sec. 41. RCW 9A.83.010 and 1992 c 210 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Conducts a financial transaction" includes initiating, concluding, or participating in a financial transaction.

(2) "Financial institution" means a bank, savings bank, credit union, or savings and loan institution.

(3) "Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, transmission, delivery, trade, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, or any other acquisition or disposition of property, by whatever means effected.

(4) "Knows the property is proceeds of specified unlawful activity" means believing based upon the representation of a law enforcement officer or his or her agent, or knowing that the property is proceeds from some form, though not necessarily which form, of specified unlawful activity.

(5) "Proceeds" means any interest in property directly or indirectly acquired through or derived from an act or omission, and any fruits of this interest, in whatever form.

(6) "Property" means anything of value, whether real or personal, tangible or intangible.

(7) "Specified unlawful activity" means an offense committed in this state that is a class A or B felony under Washington law or that is listed as "criminal profiteering" in RCW 9A.82.010(~~((+4))~~), or an offense committed in any other state that is punishable under the laws of that state by more than one year in prison, or an offense that is punishable under federal law by more than one year in prison.

EXPLANATORY NOTE:

To conform to rearrangement of RCW 9A.82.010 in alphabetical order; avoids problem of future rearrangement.

Sec. 42. RCW 10.05.030 and 1975 1st ex.s. c 244 s 3 are each amended to read as follows:

The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved alcoholism treatment (~~(facility))~~ program as designated in chapter 70.96A RCW, if the petition alleges an alcohol problem, an approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem, or to an approved mental health center, if the petition alleges a mental problem.

EXPLANATORY NOTE:

Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Sec. 43. RCW 10.05.150 and 1985 c 352 s 17 are each amended to read as follows:

A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved alcoholism treatment ((facility)) program;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved alcoholism treatment ((facility)) program as described in chapter 70.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program.

EXPLANATORY NOTE:

Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Sec. 44. RCW 10.05.160 and 1998 c 208 s 4 are each amended to read as follows:

The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment ((facility)) program.

EXPLANATORY NOTE:

Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Sec. 45. RCW 10.22.010 and 1989 c 411 s 3 are each amended to read as follows:

When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

- (1) By or upon an officer while in the execution of the duties of his office.
- (2) Riotously;
- (3) With an intent to commit a felony; or
- (4) By one family or household member against another as defined in RCW 10.99.020~~((+))~~ and was a crime of domestic violence as defined in RCW 10.99.020~~((=))~~.

EXPLANATORY NOTE:

Removes outdated and unnecessary subsection references.

Sec. 46. RCW 10.66.050 and 1989 c 271 s 218 are each amended to read as follows:

In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under RCW 10.66.020 (1), (2), or (3). The court in its discretion may allow a respondent, who is the subject of any order issued under ~~((section 214 of this act))~~ RCW 10.66.020 as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court.

EXPLANATORY NOTE:

The reference to "section 214 of this act" appears to be erroneous, as section 214 is a definition section. Section 215, codified as RCW 10.66.020, relates to the issuance of off-limits orders.

Sec. 47. RCW 10.66.100 and 1989 c 271 s 222 are each amended to read as follows:

Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under chapter ~~((7-29))~~ 7.21 RCW.

EXPLANATORY NOTE:

Chapter 7.20 RCW was repealed by 1989 c 373 s 28. For later enactment, see chapter 7.21 RCW.

Sec. 48. RCW 10.73.040 and 1893 c 61 s 31 are each amended to read as follows:

In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds (~~by section ten of this act~~), such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with.

EXPLANATORY NOTE:

The term "section ten of this act," refers to 1893 c 61 s 10, which was repealed by 1957 c 7 s 10. The requirements for sureties on appeal bonds are now set by court rule.

Sec. 49. RCW 10.77.010 and 1998 c 297 s 29 are each amended to read as follows:

As used in this chapter:

(1) "County designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(2) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

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

(4) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(5) "Developmental disability" means the condition as defined in RCW 71A.10.020((2)).

(6) "Expert or professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW;
or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(7) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(8) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

(9) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(10) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(11) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(12) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(13) "Secretary" means the secretary of the department of social and health services or his or her designee.

(14) "Treatment" means any currently standardized medical or mental health procedure including medication.

(15) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person.

EXPLANATORY NOTE:

RCW 71A.10.020 was amended by 1998 c 216 s 2, changing subsection (2) to subsection (3). The amendment by this section will obviate the necessity of similar corrections in the future.

Sec. 50. RCW 10.98.030 and 1984 c 17 s 3 are each amended to read as follows:

The Washington state patrol identification, child abuse, and criminal history section as established in RCW 43.43.700 shall be the primary source of felony conviction histories for filings, plea agreements, and sentencing on felony cases.

EXPLANATORY NOTE:

Reflects current name. See RCW 43.43.700.

Sec. 51. RCW 10.98.040 and 1985 c 201 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) "Arrest and fingerprint form" means the reporting form prescribed by the identification, child abuse, and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

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

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty—case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the identification, child abuse, and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition report shall include but not be limited to the following types of information:

- (a) The type of disposition;
- (b) The statutory citation for the arrests;
- (c) The sentence structure if the defendant was convicted of a felony;
- (d) The state identification number; and
- (e) Identification information and other information that is prescribed by the identification, child abuse, and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol identification, child abuse, and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol section on identification, child abuse, and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community service.

EXPLANATORY NOTE:

Reflects current name. See RCW 43.43.700.

Sec. 52. RCW 10.98.110 and 1993 c 31 s 1 are each amended to read as follows:

(1) The department shall maintain records to track felony cases for convicted felons sentenced either to a term of confinement exceeding one year or ordered under the supervision of the department and felony cases under the jurisdiction of the department pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a judgment and sentence form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from the time of sentencing through discharge.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol identification, child abuse, and criminal history section, the office of

financial management, and any other public or private agency that provides services to help individuals complete their felony sentences.

EXPLANATORY NOTE:

Reflects current name. See RCW 43.43.700.

Sec. 53. RCW 10.98.160 and 1987 c 462 s 5 are each amended to read as follows:

In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, jailers, the sentencing guidelines commission, the indeterminate sentence review board (~~(of prison terms and paroles)~~), the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. An executive committee appointed by the heads of the department, the Washington state patrol, and the office of financial management shall review and provide recommendations for development and modification of the section, the department, and the office of financial management's felony criminal information systems.

EXPLANATORY NOTE:

The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Passed the House February 12, 1999.

Passed the Senate April 15, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 144

[House Bill 1150]

PLANTING STOCK CERTIFICATION

AN ACT Relating to planting stock certification; amending RCW 15.14.010, 15.14.030, 15.14.070, 15.14.050, 15.14.110, 15.14.120, 15.14.040, 15.14.140, 15.14.130, and 15.13.470; adding new sections to chapter 15.14 RCW; creating a new section; recodifying RCW 15.14.010, 15.14.030, 15.14.070, 15.14.050, 15.14.110, 15.14.120, 15.14.040, 15.14.140, 15.14.150, 15.14.130, 15.14.900, and 15.14.920; decodifying RCW 15.14.910; and repealing RCW 15.14.020, 15.14.060, 15.14.080, 15.14.100, 15.69.010, 15.69.020, 15.69.030, and 15.69.040.

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

Sec. 1. RCW 15.14.010 and 1989 c 354 s 84 are each amended to read as follows:

~~((For the purpose of this chapter:))~~ The definitions 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 appointed representative))~~ the director's designee.

(3) "Person" means ~~((a natural person;))~~ an individual, ((or)) firm, partnership, corporation, company, ((society and)) association, or public entity and every officer, agent, or employee ~~((thereof. This term shall import either the singular or plural, as the case may be))~~ of these entities.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or weeds or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) ~~(("Plant propagating stock" hereinafter referred to as))~~ "Micropropagated plants" means plants propagated using aseptic laboratory techniques and an artificial culture medium.

(6) "Tolerance" means the maximum acceptable percentage of planting stock that is diseased, infected by plant pests, defective, or off-type based on visual inspection or laboratory testing by the director or other authorized person.

(7) "Planting stock" includes any ~~((propagating))~~ plant material((s)) used ((for the production or processing)) in the propagation of horticultural, floricultural, viticultural, or olericultural plants for the purpose of being sold, offered for sale, or ~~((exposed for sale))~~ distributed for planting or reproduction purposes~~((: PROVIDED, That it shall not include agricultural and vegetable seeds as defined in RCW 15.49.011.~~

~~—(6) "Certified plant stock" means the progeny of foundation, registered or certified plant stock if designated foundation and plant propagating materials that are so handled as to maintain satisfactory genetic identity and purity and have met certification standards required by this chapter and have been approved and certified by the director.~~

~~—(7) "Foundation planting stock" means plant stock propagating materials that are increased from breeder or designated plant stock and are so handled as to most nearly maintain specific genetic identity and purity. Foundation plant stock, established by designation shall be that plant stock so designated by the director.~~

~~—(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or in certain cases the sponsoring plant breeder or institution, which may include the department and which provides the source of the foundation plant stock.~~

~~—(9) "Registered planting stock" means the progeny of foundation or registered planting stock or plant propagating material that is so handled as to maintain~~

satisfactory genetic identity and purity and that has been approved and certified by the director.

— This class of planting stock shall be of a quality suitable for the production of certified planting stock).

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or sponsoring plant breeder or institution, which provides the source of foundation planting stock.

(9) "Foundation planting stock" means planting stock that has been so handled as to maintain genetic characteristics and that has been:

(a) Increased directly from breeder planting stock; or

(b) Designated as foundation planting stock by the director.

(10) "Registered planting stock" means planting stock of a quality suitable for the production of certified planting stock that has been so handled as to maintain genetic characteristics and that is:

(a) Increased directly from foundation or registered planting stock; or

(b) Designated as registered planting stock by the director.

(11) "Certified planting stock" means the progeny of foundation, registered, or certified planting stock that has been so handled as to maintain genetic characteristics, that has met certification standards authorized by this chapter, and that has been certified by the director.

Sec. 2. RCW 15.14.030 and 1961 c 83 s 3 are each amended to read as follows:

The director may adopt rules necessary to carry out the purpose and provisions of this chapter concerning, but not limited to:

(1) ~~((The))~~ Certification of planting stock as to freedom from infection by plant pests, variety, ((type, strain or other genetic character)) classification, and grade.

(2) ~~((The freedom of planting stock from infection by plant pests:~~

~~— (3) Grades and classifications for the various varieties, types or strains of planting stock and standards and sizes for such grades and/or classifications)) Establishment of tolerances for planting stock that is diseased, infected with plant pests, defective, or off-type.~~

(3) Establishment of standards and grades for planting stock.

(4) ~~((The))~~ Labeling ((and)), identification, grading, and packing of foundation, registered, and certified planting stock.

(5) ~~((The))~~ Inspection and testing of foundation, registered, and certified planting stock prior to planting during the growing season or seasons, prior to and during harvest, and subsequent to harvest.

(6) Exclusion and removal of diseased, infected with plant pests, defective, or off-type plants from foundation, registered, and certified planting stock.

(7) Establishing processes, site requirements, and criteria for participation in programs authorized by this chapter.

(8) Cultivation and sanitation practices in growing, storing, distributing, and processing foundation, registered, and certified planting stock.

(9) Establishing recordkeeping requirements.

(10) Production, utilization, and testing of micropropagated plants for foundation, registered, and certified planting stock.

(11) Establishment of fees and assessments for inspection, testing, and certification of planting stock and other services authorized by this chapter.

Sec. 3. RCW 15.14.070 and 1961 c 83 s 7 are each amended to read as follows:

The director may(~~(; subject to rules adopted under the provisions of this chapter)~~):

(1) (~~Subsequent to inspection of certified or registered planting stock prior to planting and inspection during its growth and harvest and subsequent to harvest~~) Issue certificates stating that ((such)) planting stock found by the director or other authorized person to be in compliance with rules adopted under this chapter is foundation, registered, or certified ((or registered)) planting stock.

(2) ~~Take samples in reasonable amounts as necessary of planting stock ((certified or registered under the provisions of subsection (1) of this section for the purpose of checking and testing to see if such certified and registered planting stock is maintaining its genetic characteristics)) to inspect and test for genetic characteristics and/or freedom from infection by plant pests. ((Such samples of certified or registered planting stock shall be planted and checked in Washington state crop improvement nurseries. Reports of the results of the test plantings shall be made available to the producers or commercial growers of certified or registered planting stock forthwith.))~~

(3) Publish names of growers participating in certification programs and inspection results.

(4) Require growers participating in certification programs to notify purchasers of planting stock when postharvest inspections or tests show the planting stock represented as foundation, registered, or certified has failed to meet minimum standards for certification.

NEW SECTION. Sec. 4. A new section is added to chapter 15.14 RCW to read as follows:

In order to carry out the purposes of this chapter, the director may enter at reasonable times as determined by the director and inspect any property or premises and any records required under this chapter. If the director is denied access to any property, premises, or records, the director may suspend, cancel, or refuse certification or other approval of the planting stock or may apply to a court of competent jurisdiction for a search warrant authorizing access to the property, premises, or records. The court may upon the application issue a search warrant for the purpose requested.

NEW SECTION. Sec. 5. A new section is added to chapter 15.14 RCW to read as follows:

The director may enter into compliance agreements with any grower of foundation, registered, or certified planting stock for the purpose of carrying out the provisions of this chapter. The director may suspend or cancel any compliance agreement for cause. Upon notice by the director to suspend or cancel a compliance agreement, a person may request a hearing under chapter 34.05 RCW.

Sec. 6. RCW 15.14.050 and 1961 c 83 s 5 are each amended to read as follows:

~~((The director may,))~~ For ~~((the))~~ purposes of maintaining and/or improving the genetic characteristics and freedom from infection by plant pests of any registered, foundation, and breeder planting stock, ~~((make such))~~ the director may acquire, propagate, and distribute registered, foundation, and breeder planting stock ~~((readily available))~~ to producers and commercial growers ~~((acquire and plant such foundation and breeder planting stock for research and propagation))~~. The director may charge fees for the planting stock and may place restrictions on its use and propagation by producers and commercial growers.

Sec. 7. RCW 15.14.110 and 1961 c 83 s 11 are each amended to read as follows:

The director may accept ~~((for certification))~~ as certified, registered, foundation, or breeder ~~((seed))~~ planting stock; any ~~((plant material))~~ planting stock grown or produced by Washington state university, the United States department of agriculture or other propagators whose plant materials are produced in conformance with the requirements of this chapter and rules adopted ~~((hereunder. Such propagators' plant materials shall have been under the observation of the director for a period of not less than one year pursuant to periodic inspections by the director before he may certify them as foundation or breeder planting stock))~~ under this chapter.

Sec. 8. RCW 15.14.120 and 1961 c 83 s 12 are each amended to read as follows:

The director may cooperate with and enter into agreements with Washington State University, ~~((experimental stations, governmental agencies of this state,))~~ the United States department of agriculture, other state~~((s))~~ and federal agencies ~~((of the federal government)), and any other organization~~ in order to carry out the purposes and provisions of this chapter.

Sec. 9. RCW 15.14.040 and 1961 c 83 s 4 are each amended to read as follows:

The director may acquire by ~~((purchase,))~~ gift, ~~((devise, lease or rental,))~~ grant, or endowment from public or private sources, as may be made in trust or otherwise, for the use and benefit of the purposes of this chapter, real property and any other type property, ~~((including any equipment, products or planting stock necessary to carry out the purpose of this chapter. Such real property shall be~~

~~designated as Washington state crop improvement nurseries and may be located in remote or outlying areas where the breeder or foundation planting stock may be planted to better protect its genetic identity and freedom from plant pests)) and expend the same or any income therefrom according to the terms of the gift, grant, or endowment.~~

NEW SECTION. Sec. 10. A new section is added to chapter 15.14 RCW to read as follows:

The director may suspend, cancel, or refuse certification or other approval of any planting stock that fails to meet the certification requirements authorized in this chapter. Upon notice by the director to suspend, cancel, or refuse certification or other approval of any planting stock, a person may request a hearing under chapter 34.05 RCW.

Sec. 11. RCW 15.14.140 and 1961 c 83 s 14 are each amended to read as follows:

It ~~((shall be))~~ is unlawful for any person to sell, offer for sale, hold for sale, label, identify, represent, or to advertise any planting stock as being certified, registered, foundation, or breeder planting stock unless it ~~((has been inspected by the director and he has issued a certificate stating that such planting stock has met))~~ complies with the requirements of this chapter and rules adopted ~~((hereunder and that it is properly identified and labeled))~~ under this chapter.

NEW SECTION. Sec. 12. A new section is added to chapter 15.14 RCW to read as follows:

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 for any fee or assessment authorized by this chapter.

NEW SECTION. Sec. 13. A new section is added to chapter 15.14 RCW to read as follows:

The director may withhold services to growers of planting stock for refusal to comply with the provisions of this chapter or its rules, for nonpayment of fees and assessment moneys owed to the department by law, or for nonpayment of any assessment moneys due to an agricultural commodity commission.

Sec. 14. RCW 15.14.130 and 1961 c 83 s 13 are each amended to read as follows:

All the moneys collected ~~((by the director))~~ under the provisions of this chapter shall be paid ~~((into the northwest nursery))~~ to the director and deposited in the planting stock certification account within the agricultural local fund ~~((as created in RCW 15.69.020))~~ and shall be used ~~((by the director))~~ only to carry out the purposes and provisions of this chapter.

NEW SECTION. Sec. 15. Any residual balance of funds remaining in the northwest nursery fund on the effective date of this act shall be transferred to the planting stock certification account within the agricultural local fund.

Sec. 16. RCW 15.13.470 and 1993 c 120 s 17 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter and rules adopted under this chapter. No appropriation is required for the disbursement of moneys from the account by the director. ((Any residual balance of funds remaining in the nursery inspection fund on July 26, 1987, shall be transferred to that account within the agricultural local fund: PROVIDED, That))

(2) All fees collected for fruit tree, fruit tree related ornamental tree, and fruit tree rootstock assessments as set forth in this chapter shall be deposited in the ((northwest nursery)) planting stock certification account within the agricultural local fund to be used only for the Washington fruit tree and fruit tree related ornamental tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

NEW SECTION. **Sec. 17.** The following acts or parts of acts are each repealed:

- (1) RCW 15.14.020 and 1961 c 83 s 2;
- (2) RCW 15.14.060 and 1961 c 83 s 6;
- (3) RCW 15.14.080 and 1989 c 175 s 44 & 1961 c 83 s 8;
- (4) RCW 15.14.100 and 1961 c 83 s 10;
- (5) RCW 15.69.010 and 1961 c 11 s 15.69.010;
- (6) RCW 15.69.020 and 1961 c 11 s 15.69.020;
- (7) RCW 15.69.030 and 1961 c 11 s 15.69.030; and
- (8) RCW 15.69.040 and 1961 c 11 s 15.69.040.

NEW SECTION. **Sec. 18.** RCW 15.14.910 is decodified.

NEW SECTION. **Sec. 19.** The following sections are codified or recodified within chapter 15.14 RCW in the following order:

- RCW 15.14.010;
- RCW 15.14.030;
- RCW 15.14.070;
- section 4 of this act;
- section 5 of this act;
- RCW 15.14.050;
- RCW 15.14.110;
- RCW 15.14.120;
- RCW 15.14.040;
- section 10 of this act;
- RCW 15.14.140;
- RCW 15.14.150;
- section 12 of this act;
- section 13 of this act;

RCW 15.14.130;
RCW 15.14.900; and
RCW 15.14.920.

Passed the House February 22, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 145

[House Bill 1152]

LIMITED AND RANCHER PRIVATE APPLICATOR LICENSES—PILOT PROJECT

AN ACT Relating to a pilot project for limited private applicator licenses and rancher private applicator licenses; and amending RCW 17.21.187.

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

Sec. 1. RCW 17.21.187 and 1997 c 242 s 20 are each amended to read as follows:

(1) The purpose of this section is to establish a pilot project to evaluate the feasibility of establishing a limited private applicator license and a rancher private applicator license to facilitate the control of weeds, especially those defined as noxious weeds, in Washington state.

(2) "Limited private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in RCW 17.21.020(12), of the use of any herbicide classified by the EPA or the director as a restricted use pesticide, for the sole purpose of controlling weeds on nonproduction agricultural land owned or rented by the applicator or the applicator's employer. Nonproduction agricultural land includes pastures, range land, fencerows, and areas around farm buildings but not aquatic sites. A limited private applicator also may apply restricted use herbicides to nonproduction agricultural land of another person if applied without compensation other than trading of personal services between the applicator and the other person. ~~((A limited private applicator may not apply restricted use herbicides through any equipment defined under this chapter as an apparatus.))~~

(3) "Rancher private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in RCW 17.21.020(12), of the use of any herbicide and/or any rodenticide classified by the environmental protection agency or the director as a restricted use pesticide for the purpose of controlling weeds and pest animals on the agricultural land owned or rented by the applicator or the applicator's employer. For the purpose of this subsection, "agricultural land" means nonproduction agricultural land and production agricultural land used to grow hay and grain crops that are consumed by the livestock on the farm where produced: PROVIDED, That up to ten percent of the crops grown on the agricultural land in a calendar year may be sold within the

county of production. Nonproduction agricultural land includes pastures, rangeland, fencerows, and areas around farm buildings. For the purposes of this subsection, agricultural land does not include aquatic sites. A rancher private applicator also may apply restricted use herbicides and rodenticides to the agricultural land of another person if applied without compensation other than trading of personal services between the applicator and the other person.

(4) Limited private applicator and rancher private applicator licenses may be issued only in counties where the county cooperative extension service and/or the county weed board complete a memorandum of understanding with the department agreeing to conduct a minimum of two hours of department-approved weed control-related recertification coursework every year and to maintain the recertification credit records for the limited private applicators in their county.

(5) A person may participate in the pilot project by applying to be licensed as a limited private applicator or rancher private applicator in ((1998, 1999, or) 2000, 2001, or 2002. The application ((requirements, fee,)) and examination requirements for a limited private applicator and a rancher private applicator are the same as for a private applicator.

((4)(a)-A) (a) Applications for a limited private applicator license shall be accompanied by a fee of twenty-five dollars.

(b) Applications for a rancher private applicator shall be accompanied by a fee of seventy-five dollars.

(6) All limited private applicator and rancher private applicator licenses expire on December 31, 2004.

(7)(a) Limited private ((applicator-is)) applicators and rancher private applicators are exempt from the credit accumulation requirements of RCW 17.21.128(2)(a), and, upon application, begins a recertification period which ends on December 31, ((2002)) 2004.

(i) Limited private ((pesticide)) applicators first applying for a license in ((1998)) 2000 shall accumulate a minimum of ((ten)) eight department-approved credits by the end of the recertification period.

(ii) Limited private ((pesticide)) applicators first applying for a license in ((1999)) 2001 or 2002 shall accumulate a minimum of ((eight)) six department-approved credits by the end of the recertification period.

((Limited private pesticide applicators first applying for a license in 2000 shall accumulate a minimum of six)) Rancher private applicators first applying for a license in 2000 shall accumulate a minimum of twelve department-approved credits by the end of the recertification period.

(iv) Rancher private applicators first applying for a license in 2001 or 2002 shall accumulate a minimum of ten department-approved credits by the end of the recertification period.

(b) All credits for the limited private applicator license must be applicable to the control of weeds with at least half of the credits directly related to weed control

and the remaining credits in topic areas indirectly related to weed control, such as the safe and legal use of pesticides.

~~((5) Any)~~ (8) Limited private applicators and rancher private applicators who successfully complete(s) the recertification requirements of this section ((is)) are deemed to have met the credit accumulation requirements of RCW 17.21.128(2)(a) for private applicators and may reapply as a private applicator in 2005. A limited private applicator or rancher private applicator who applies for a private applicator license during the pilot project must meet the fee, annual renewal, and credit accumulation requirements for private applicators.

~~((6))~~ (9) By September 1, 2003, the department shall report to the legislature on the results of the pilot project.

(10) This section applies only to certified applicators in Ferry, Stevens, Pend Orielle, and Okanogan counties, Washington and expires December 31, ((2002)) 2004.

Passed the House February 12, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 146

[Substitute House Bill 1158]

MOTOR CARRIER INTELLIGENT INFORMATION SYSTEMS

AN ACT Relating to truck, tractor, or trailer intelligent information systems; and adding a new section to chapter 42.17 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 42.17 RCW to read as follows:

Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer is confidential and not subject to public disclosure under this chapter. However, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this section, "motor carrier" has the same definition as provided in RCW 81.80.010.

Passed the House March 9, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 147

[Substitute House Bill 1181]

DOMESTIC VIOLENCE PERPETRATOR TREATMENT PROGRAMS

AN ACT Relating to domestic violence perpetrator treatment programs; amending RCW 26.50.150, 26.50.060, and 9.94A.120; and prescribing penalties.

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

Sec. 1. RCW 26.50.150 and 1991 c 301 s 7 are each amended to read as follows:

The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs that accept perpetrators of domestic violence into treatment to satisfy court orders or that represent the programs as ones that treat domestic violence perpetrators. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including: Current and past violence history; a lethality risk assessment; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;

(b) A release to prior and current treatment agencies to provide information on the perpetrator to the program; and

(c) A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

(3) Treatment must be for a minimum treatment period defined by the secretary of the department by rule. The weekly treatment sessions must be in a group unless there is a documented, clinical reason for another modality. Any other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews, may be concomitant with the weekly group treatment sessions described in this section but not a substitute for it.

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence. If the perpetrator or the victim has a minor child, treatment must specifically include education regarding the effects of domestic violence on

children, such as the emotional impacts of domestic violence on children and the long-term consequences that exposure to incidents of domestic violence may have on children.

(5) Satisfactory completion of treatment must be contingent upon the perpetrator meeting specific criteria, defined by rule by the secretary of the department, and not just upon the end of a certain period of time or a certain number of sessions.

(6) The program must have policies and procedures for dealing with reoffenses and noncompliance.

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

(8) The secretary of the department may adopt rules and establish fees as necessary to implement this section.

Sec. 2. RCW 26.50.060 and 1996 c 248 s 13 are each amended to read as follows:

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling which the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(d) Order the respondent to participate in (~~batterers' treatment~~) a domestic violence perpetrator treatment program approved under RCW 26.50.150;

(e) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(f) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee;

(g) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(h) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(i) Consider the provisions of RCW 9.41.800;

(j) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and

(k) Order use of a vehicle.

(2) If a restraining order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(f) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of

domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

Sec. 3. RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional

facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

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

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

(b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

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

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

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) The offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within

available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;
(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

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

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision

not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

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

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

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

(A) Frequency and type of contact between offender and therapist;

(B) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(D) Anticipated length of treatment; and

(E) Recommended crime-related prohibitions.

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

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex 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 eleven 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 custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section;

(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; and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned early release time while serving a suspended sentence.

(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 custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The 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 custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) 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.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

(ix) For purposes of this subsection (8), "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.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

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

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

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

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

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

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

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early

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

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

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

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

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

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

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

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

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

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

(iv) The offender shall not consume alcohol;

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

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

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

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11) 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.

(12) 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 for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. 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 unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the

initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. 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.

(13) 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.

(14) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(a) The instructions shall include, at a minimum, 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.

(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. The conditions authorized under this subsection (14)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of a sex offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) of this section.

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(15) 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.

(16) 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.

(17) 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).

(18) 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.

(19) 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.

(20) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(21) 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.

(22) 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.

(23) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

Passed the House February 26, 1999.

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Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 148

[Substitute House Bill 1219]

FIRE FIGHTERS OR RESERVE OFFICERS—RETIREMENT PENSIONS

AN ACT Relating to relief and retirement pensions under chapter 41.24 RCW; amending RCW 41.24.010, 41.24.020, 41.24.035, 41.24.040, 41.24.060, 41.24.070, 41.24.080, 41.24.090, 41.24.110, 41.24.120, 41.24.140, 41.24.150, 41.24.160, 41.24.170, 41.24.172, 41.24.180, 41.24.200, 41.24.210, 41.24.220, 41.24.230, 41.24.245, 41.24.250, 41.24.280, 41.24.290, 41.24.300, 41.24.310, 41.24.320, 41.24.330, 41.24.340, 41.24.400, 41.24.450, and 41.24.460; reenacting and amending RCW 41.24.030; and repealing RCW 41.24.350, 41.24.420, 41.24.440, and 41.24.470.

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

Sec. 1. RCW 41.24.010 and 1995 c 11 s 1 are each amended to read as follows:

(As used in) The definitions in this section apply throughout this chapter(+) unless the context clearly requires otherwise.

(1) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any ~~((water, irrigation;))~~ emergency medical service district or other special district, authorized by law ~~((to afford emergency medical services or protection))~~ to protect life ((and)) or property within its boundaries through a fire department, emergency workers, or reserve officers.

(2) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer fire fighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(3) "Fire fighter" includes any fire fighter or emergency worker who is a member of any fire department of any municipality but shall not include full time, paid fire fighters who are members of the Washington law enforcement officers' and fire fighters' retirement system, with respect to periods of service rendered in such capacity.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include full-time, paid emergency medical service personnel who are members of the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters ((or)), any fire station, any law enforcement office or precinct, or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(6) "State board" means the state board for volunteer fire fighters and reserve officers ((created herein)).

(7) "Board of trustees" or "local board" means: (a) For matters affecting fire fighters, a fire fighter board of trustees created under RCW 41.24.060 ((or)); (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(8) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(9) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include full-time, paid law enforcement officers who are members of the Washington law enforcement officers' and fire fighters' retirement system, with respect to periods of service rendered in such capacity.

(10) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any fire fighter or emergency worker; and (b) for purposes of retirement pension, any fire fighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(11) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

(12) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

(13) "Principal fund" means the volunteer fire fighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

(14) "Administrative fund" means the volunteer fire fighters' and reserve officers' administrative fund created under RCW 41.24.030.

Sec. 2. RCW 41.24.020 and 1989 c 91 s 9 are each amended to read as follows:

(1) Every municipal corporation maintaining and operating a regularly organized fire department shall make provision by appropriate legislation for the enrollment of every fire fighter under the relief ~~((and compensation))~~ provisions of this chapter for the purpose of providing protection for all its fire fighters and their families from death, ~~sickness, injury,~~ or disability arising in the performance of their duties as fire fighters ~~((:PROVIDED, That)),~~ Nothing ((herein)) in this chapter shall prohibit any municipality from providing such additional protection for relief ((and compensation, or death benefit)) as it may deem proper.

(2) Any municipal corporation maintaining and operating a regularly organized fire department may make provision by appropriate legislation ~~((whereby))~~ allowing any member of its fire ((fighter may)) department to enroll under the retirement pension provisions of this chapter ((for the purpose of enabling any fire fighter, so electing, to avail himself or herself of the retirement provisions of this chapter)).

(3) Every municipal corporation shall make provisions for the collection and payment of the fees ~~((as herein))~~ provided under this chapter, and shall continue to make such provisions for all fire fighters who come under this chapter as long as they shall continue to be members of its fire department.

Sec. 3. RCW 41.24.030 and 1995 c 45 s 1 and 1995 c 11 s 3 are each reenacted and amended to read as follows:

(1) ~~((There))~~ The volunteer fire fighters' and reserve officers' relief and pension principal fund is created in the state treasury as a trust fund for the benefit of the participants covered by this chapter((, which shall be designated the volunteer fire fighters' relief and pension principal fund and shall consist)) consisting of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording ~~((the members of its fire department with protection from death or disability as))~~ relief provided in this chapter for fire fighters as follows:

(i) Ten dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) An annual fee for each emergency worker of an emergency medical service district paid by the district that is sufficient to pay the full costs of covering the emergency worker under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(d) Where a municipal corporation has elected to make relief provisions of this chapter available to its reserve officers, an annual fee for each reserve officer paid by the municipal corporation that is sufficient to pay the full costs of covering the reserve officer under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(e) Where a municipal corporation has elected to make ~~((available to the members of its fire department))~~ the retirement pension provisions ~~((as provided in))~~ of this chapter available to members of its fire department, an annual fee of sixty dollars for each of its fire fighters electing to enroll ~~((therein))~~, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the fire fighter. However, nothing in this section prohibits any municipality from voluntarily paying the fire fighters' ~~((share of the))~~ fee for this retirement ((provision)) pension coverage.

~~((d))~~ (f) Where an emergency medical service district has elected to make the retirement pension provisions of this chapter available to its emergency workers, for each emergency worker electing to enroll: (i) An annual fee of thirty dollars shall be paid by the emergency worker; and (ii) an annual fee paid by the emergency medical service district that, together with the thirty-dollar fee per emergency worker, is sufficient to pay the full costs of covering the emergency worker under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any emergency medical service district from voluntarily paying the emergency workers' fees for this retirement pension coverage.

(g) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to its reserve officers, for each reserve officer ~~((that elects))~~ electing to enroll: (i) An annual fee of thirty dollars shall be paid by the reserve officer; and (ii) an annual fee ~~((determined by the state board))~~ paid by the municipal corporation that, together with the thirty-dollar fee per reserve officer, is sufficient to pay the full costs of covering the reserve officer under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation ~~((shall be paid by the municipal corporation. The fee paid by the municipal corporation may include operating expenses:~~

~~—(e) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund created in subsection (2) of this section) of the system. However, nothing in this section prohibits any municipal corporation from voluntarily paying the reserve officers' fees for this retirement pension coverage.~~

~~((f)) (h) Moneys transferred from the administrative fund, as provided under subsection (4) of this section, which may only be used to pay relief and retirement pensions for fire fighters.~~

~~(i) Earnings from the investment of moneys in the principal fund.~~

~~(2) The state investment board, upon request of the state treasurer shall have full power to invest ((or reinvest such)), reinvest, manage, contract, sell, or exchange investments acquired from that portion of the amounts credited to the principal fund as is not, in the judgment of the state ((treasurer)) board, required to meet current withdrawals. ((Such)) Investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.~~

~~((g)) All bonds, investments, or other obligations purchased ((according to (f) of this subsection shall be forthwith)) by the state investment board shall be placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.~~

The state investment board may sell any of the bonds, investments, or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

~~(3) The interest, earnings, and proceeds from the sale and redemption of any ((bonds or other obligations)) investments held by the principal fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.~~

Subject to restrictions contained in this chapter, all amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

~~((2)) (4) The volunteer fire fighters' ((relief and pension)) and reserve officers' administrative fund is ((hereby)) created in the state treasury. Moneys in the ((account)) fund, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer fire fighters' and reserve officers' relief and pension principal fund, the operating expenses of the volunteer fire fighters' ((relief and pension)) and reserve officers' administrative fund, or for transfer from the administrative fund to the principal fund.~~

(a) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund.

(b) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

~~((b))~~ (c) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium.

Sec. 4. RCW 41.24.035 and 1989 c 194 s 2 are each amended to read as follows:

The state board is authorized to pay from the ~~((interest))~~ earnings of the ~~((trust funds of the system))~~ principal fund and administrative fund lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the ~~((trust))~~ principal fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

Sec. 5. RCW 41.24.040 and 1995 c 11 s 5 are each amended to read as follows:

On or before the first day of March of each year, every ~~((municipal corporation))~~ municipality shall pay such amount as shall be due from it to ~~((said))~~ the principal fund, together with the amounts collected from the participants ~~((: PROVIDED, That no fire fighter [participant]))~~. A participant shall not forfeit his or her right to participate in the relief ((and compensation)) provisions of this chapter by reason of ((nonpayment: PROVIDED FURTHER, That no)) the municipal corporation failing to pay the amount due from it. A participant shall not forfeit his or her right to participate in the retirement pension provisions of this chapter until after March 1st of ((such)) the year ((: AND PROVIDED FURTHER, That)) in which the municipality fails to make the required payments. Where a municipality has failed to pay or remit the annual fees required within the time provided, such delinquent payment shall bear interest at the rate of one percent per month from March 1st until paid ((: AND PROVIDED FURTHER, That)) or remitted. Where a participant has forfeited his or her right to participate in the retirement provisions of this chapter that participant may be reinstated so as to participate to the same extent as if all fees had been paid by the payment of all back fees with interest at the rate of one percent per month provided he or she has at all times been otherwise eligible.

Sec. 6. RCW 41.24.060 and 1981 c 213 s 7 are each amended to read as follows:

A fire fighter board of trustees is created and established to administer this chapter in every municipal corporation maintaining a regularly organized fire department ((there is hereby created and established a board of trustees for the administration of this chapter. Such)). A fire fighter board of trustees shall consist of the mayor, city clerk or comptroller, and one councilmember of such municipality, the chief of the fire department, and one member of the fire department to be elected by the members of such fire department for a term of one year and annually thereafter. Where a municipality is governed by a board, the chair, one member of the board, and the secretary or clerk thereof shall serve as members of ((said)) the fire fighter board of trustees in lieu of the mayor, clerk or comptroller, and councilmember.

Sec. 7. RCW 41.24.070 and 1969 c 118 s 1 are each amended to read as follows:

The mayor or ((~~chairman~~)) chair of the board or commission of any ((~~such~~)) municipality with a fire department, or his or her designee, shall be ((~~chairman~~)) chair of the fire fighter board of trustees, and the clerk or comptroller or secretary of any such municipality, board, or commission, or his or her designee, shall be the secretary-treasurer of the board of trustees.

The secretary shall keep a public record of all proceedings((;)) and of all receipts and disbursements made by the board of trustees ((~~and~~)), shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of ((~~said~~)) the principal fund in ((~~such~~)) the municipality, ((~~such record to be placed on file in such municipality. Such forms as shall be necessary for the proper administration of this fund and of making the reports required hereunder shall be provided by the state board~~)) and shall make all required reports to the state board. The state board shall provide all necessary forms to fire fighter boards of trustees.

Sec. 8. RCW 41.24.080 and 1989 c 91 s 12 are each amended to read as follows:

The board of trustees of each municipal corporation shall provide for enrollment of all members of its fire department under the ((~~death and disability~~)) relief provisions ((~~hereof~~)) of this chapter; provide for enrollment of all its reserve officers under the relief provisions of this chapter if it has extended these relief provisions to its reserve officers; receive all applications for the enrollment under the retirement pension provisions ((~~hereof~~)) of this chapter when the municipality has ((~~elected to enroll thereunder~~)) extended these retirement pension provisions to its fire fighters or reserve officers; provide for disbursements of relief ((~~and compensation~~)); determine the eligibility of fire fighters and reserve officers for retirement pensions; and pass on all claims and direct payment thereof from the ((~~volunteer fire fighters' relief and pension~~)) principal fund to those entitled thereto. Vouchers shall be issued to the persons entitled thereto by the local board. It shall send to the state board, after each meeting, a voucher for each person entitled to

payment from the principal fund, stating the amount of such payment and for what granted, which voucher shall be certified and signed by the ~~((chairman))~~ chair and secretary of the local board. The state board, after review and approval, shall cause a warrant to be issued on the principal fund for the amount specified and approved on each voucher~~((PROVIDED, That in))~~. However, in retirement pension cases after the applicant's eligibility for pension is verified, the state board shall authorize the regular issuance of monthly warrants or electronic transfers of funds in payment ~~((thereof))~~ of the retirement pension without further action of the board of trustees of any such municipality.

Sec. 9. RCW 41.24.090 and 1945 c 261 s 9 are each amended to read as follows:

~~((Said))~~ A board of trustees shall meet on the call of its ~~((chairman))~~ chair on a regular monthly meeting day when there is business to come before it. The ~~((chairman))~~ chair shall be required to call a meeting on any regular meeting day at the request of any member of the fund or his or her beneficiary claiming any relief~~((compensation))~~ or retirement pension ~~((therefrom))~~.

Sec. 10. RCW 41.24.110 and 1989 c 91 s 13 are each amended to read as follows:

The local board shall make provisions for ~~((the employment of a))~~ reimbursing regularly licensed practicing physicians ~~((for the examination of members of fire departments))~~ and other medical staff who examine participants making application for membership. ~~((Such appointed physician shall visit and examine all sick and injured fire fighters.))~~ Physicians and other medical staff shall perform such services and operations and render all medical aid and care necessary for the recovery and treatment of ((fire fighters)) participants on account of injury, sickness, or disability received while in the performance of duties((Such appointed physician)) and shall be paid ((his or her fees from said)) for these services from the principal fund, but not in excess of the schedule of fees for like services approved by the director of labor and industries under Title 51 RCW. ~~((No))~~ A physician or ~~((surgeon))~~ other medical staff, who is not approved by the local board, shall not receive or be entitled to any compensation from ~~((said))~~ the principal fund as the private or attending physician or other private or attending medical staff of any ~~((fire fighter))~~ participant. ~~((No))~~ A person shall not have any right of action against the local board ~~((of trustees of said fund))~~ for the negligence of any physician or ~~((surgeon employed by it))~~ other medical staff who is reimbursed from the principal fund. Any physician ~~((employed by the board to attend upon any fire fighter))~~ or other medical staff who is reimbursed from the principal fund for providing service or care for a participant shall report his or her findings in writing to ~~((said))~~ the local board and the state board.

Sec. 11. RCW 41.24.120 and 1969 c 118 s 3 are each amended to read as follows:

The local board shall initially bear and decide all applications for relief or ~~((compensation and))~~ retirement pensions under this chapter, subject to review by,

or appeal by the proper person to, the state board where decision on such review or appeal shall be final and conclusive.

Sec. 12. RCW 41.24.140 and 1989 c 91 s 14 are each amended to read as follows:

~~((Said board of trustees shall have the power and authority to ask for the appointment of))~~ A local board may appoint a guardian whenever and wherever the claim of a ~~((fire fighter))~~ participant or his or her beneficiary would, in the opinion of the local board, be best served ~~((thereby))~~ by the appointment. The local board shall have full power to make and direct the payments ~~((herein provided for))~~ under this chapter to any person entitled ~~((thereto))~~ to the payments without the necessity of any guardianship or administration proceedings, when in its judgment, it shall determine it to be for the best interests of the beneficiary.

Sec. 13. RCW 41.24.150 and 1996 c 57 s 1 are each amended to read as follows:

Whenever a ~~((fire fighter serving in any capacity as a member of the fire fighter's own fire department subject to the provisions of this chapter))~~ participant becomes physically or mentally disabled, injured, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the principal fund monthly, an amount equal to his or her monthly wage as certified by the local board or two thousand five hundred fifty dollars, whichever is less, for a period not to exceed six months, or an amount equal to his or her daily wage as certified by the local board or eighty-five dollars, whichever is less, per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1, 1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of one thousand two hundred seventy-five dollars so long as the disability continues, except as ~~((hereinafter))~~ provided~~((:—PROVIDED, That))~~. However, if the ~~((member))~~ participant has a wife or husband and/or a child or children unemancipated or under eighteen years of age, he or she is entitled to draw from the fund monthly the additional sums of two hundred fifty-five dollars because of the fact of his wife or her husband, and one hundred ten dollars because of the fact of each child unemancipated or under eighteen years of age, all to a total maximum amount of two thousand five hundred fifty dollars.

The state board may at any time reopen the grant of such disability pension if the pensioner is gainfully employed, and may reduce it in the proportion that the annual income from such gainful employment bears to the annual income received by the pensioner at the time of his or her disability~~((:—PROVIDED, That))~~.

Where a ~~((fire-fighter))~~ participant sustains a permanent partial disability the state board may provide that ~~((such))~~ the injured ~~((fire-fighter-shall))~~ participant receive a lump sum compensation therefor to the same extent as is provided for permanent partial disability under the workers' compensation act under Title 51 RCW in lieu of such monthly disability payments.

Sec. 14. RCW 41.24.160 and 1998 c 151 s 1 are each amended to read as follows:

(1) Whenever a ~~((fire-fighter, or a reserve-officer provided a benefit under this section,))~~ participant dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment from the principal fund of the sum of one hundred fifty-two thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her parents or either of them, and the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower during his or her life together with the additional monthly sum of one hundred ten dollars for each child of the member, unemancipated or under eighteen years of age, dependent upon the member for support at the time of his or her death, to a maximum total of two thousand five hundred fifty dollars per month.

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased ~~((fire-fighter))~~ participant or if, after the death of the ~~((fire-fighter))~~ participant, legal custody of such child or children passes from the widow or widower to another person, any payment on account of such child or children not in the legal custody of the widow or widower shall be made to the person or persons having legal custody of such child or children. Such payments on account of such child or children shall be subtracted from the amount to which such widow or widower would have been entitled had such widow or widower had legal custody of all the children and the widow or widower shall receive the remainder after such payments on account of such child or children have been subtracted. If there is no widow or widower, or the widow or widower dies while there are children, unemancipated or under eighteen years of age, then the amount of ~~((eight))~~ one thousand two hundred ~~((twenty-five))~~ seventy-five dollars per month shall be paid for the youngest or only child together with an additional ~~((seventy))~~ one hundred ten dollars per month for each additional of such children to a maximum of ~~((one))~~ two thousand ~~((six))~~ five hundred fifty dollars per month until they become emancipated or reach the age of eighteen years; and if there are no widow or widower, child, or children entitled thereto, then to his or her parents or either of them the sum of ~~((eight))~~ one thousand two hundred ~~((twenty-five))~~ seventy-five dollars per month for life, if it is proved to the satisfaction of the board that the parents, or either of them, were dependent on the deceased for their support at the time of his or her death. In any instance in subsections (1) and (2) of this section, if the widow or widower, child or children,

or the parents, or either of them, marries while receiving such pension the person so marrying shall thereafter receive no further pension from the fund.

(3) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twelve thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is ~~((hereby))~~ given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule ~~((aforesaid))~~ under this subsection the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. ~~((Any person receiving a monthly payment under this section on June 29, 1961, may elect, within two years, to convert such payments into a lump sum payment as provided in this section.))~~

Sec. 15. RCW 41.24.170 and 1995 c 11 s 7 are each amended to read as follows:

Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized ~~((volunteer))~~ fire department or law enforcement agency of any municipality in this state, and which municipality has adopted appropriate legislation allowing its fire fighters or reserve officers to enroll in the retirement pension provisions of this chapter, and the participant ~~((are))~~ has enrolled under the retirement pension provisions~~((:))~~ and ~~((the participant))~~ has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension from the principal fund as provided in this section.

Whenever a participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such participant be paid a monthly pension of two hundred twenty-five dollars from the fund for the balance of that participant's life.

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of twenty-five

dollars increased by the sum of eight dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any participant, upon completion of twenty-five years' service and attainment of age sixty, may irrevocably elect, in lieu of the pension to which that participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to sixty percent of such pension.

(2) Any participant, upon completion of twenty-five years' service and attainment of age sixty-two, may irrevocably elect, in lieu of the pension to which that participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to seventy-five percent of such pension.

(3) Any participant, upon completion of less than twenty-five years of service shall receive the applicable reduced pension provided in this subsection, according to the age at which that participant elects to begin to receive the pension. If receipt of the benefits begins at age sixty-five the participant shall receive one hundred percent of the reduced benefit; at age sixty-two the participant shall receive seventy-five percent of the reduced benefit; and at age sixty the participant shall receive sixty percent of the reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to fifteen percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to sixty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service.

Sec. 16. RCW 41.24.172 and 1995 c 11 s 9 are each amended to read as follows:

Before beginning to receive the retirement pension provided for in RCW 41.24.170, the participant shall elect, in a writing filed with the state board, to have the retirement pension paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A participant electing this option shall receive a monthly pension payable throughout the participant's life. However, if the participant dies before the total retirement pension paid to the participant equals the amount paid

on behalf of the participant into the principal fund, then the balance shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to the participant's legal representatives.

(2) Option 2. A participant electing this option shall receive a reduced monthly pension, which upon the participant's death shall be continued throughout the life of and paid to the participant's surviving spouse named in the written election filed with the state board.

Sec. 17. RCW 41.24.180 and 1989 c 91 s 5 are each amended to read as follows:

The board of trustees of any municipal corporation shall direct payment from ~~((said))~~ the principal fund in the following cases:

(1) To any ~~((volunteer fire fighter))~~ participant, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension ~~((herein))~~ provided under this chapter and who was enrolled in ~~((said fund))~~ the retirement provisions and on whose behalf annual fees for retirement pension were paid, a lump sum amount equal to the amount paid into the fund by the ~~((fire fighter))~~ participant.

(2) If any ~~((fire fighter))~~ participant who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or ~~((4))~~ (3) of this section, there shall be paid to the ~~((fire fighter's))~~ participant's surviving spouse, or if there be no surviving spouse, then to such ~~((fire fighter's))~~ participant's legal representatives, a lump sum amount equal to the amount paid into the fund by the ~~((fire fighter))~~ participant. If any ~~((fire fighter))~~ participant who has completed at least ten years of service dies other than as the result of injuries received or sickness contracted in consequence or as the result of the performance of his or her duties, without having requested a lump sum payment under subsection (1) or ~~((4))~~ (3) of this section and before beginning to receive the monthly pension provided for in this chapter, the ~~((fire fighter's))~~ participant's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of RCW 41.24.172 and further actuarially reduced to reflect the difference in the number of years between the ~~((fire fighter's))~~ participant's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the principal fund by the ~~((fire fighter))~~ participant and the municipality or municipalities in whose department he or she has served.

If there be no such surviving spouse, then there shall be paid to the ~~((fire fighter's))~~ participant's legal representatives a lump sum amount equal to the amount paid into the fund by the ~~((fire fighter))~~ participant.

~~((4))~~ (3) If any ~~((volunteer fire fighter))~~ participant retires from ~~((the fire))~~ service before attaining the age of sixty-five years, the ~~((fire fighter))~~ participant may make application for the return in a lump sum of the amount paid into the fund by himself or herself.

Sec. 18. RCW 41.24.200 and 1995 c 11 s 12 are each amended to read as follows:

The aggregate term of service of any participant need not be continuous nor need it be confined to a single fire department or law enforcement agency nor a single municipality in this state to entitle such participant to a retirement pension(~~(: PROVIDED, That)~~) if the participant has been duly enrolled in a fire department or law enforcement agency of a municipality which has elected to (~~make provisions for~~) extend the retirement (~~(of its participants)~~) pension provisions of this chapter to its fire fighters or reserve officers at the time he or she becomes eligible for (~~such~~) the retirement pension (~~(as in this chapter provided,)~~) and has paid all fees prescribed. To be eligible to the full pension a participant must have an aggregate of twenty-five years service, have made twenty-five annual payments into the fund, and be sixty-five years of age at the time the participant commences drawing the pension provided for by this chapter, all of which twenty-five years service must have been in the fire department or law enforcement agency of a municipality or municipalities which have elected to (~~make provisions for~~) extend the retirement (~~(of its participants: PROVIDED, HOWEVER, That)~~) pension provisions of this chapter to its fire fighters or reserve officers. Nothing (~~herein contained~~) in this chapter shall require any participant having twenty-five years active service to continue as a fire fighter or reserve officer and no participant who has completed twenty-five years of active service for which annual retirement pension fees have been paid and who continues as a fire fighter or reserve officer shall be required to pay any additional annual pension fees.

Sec. 19. RCW 41.24.210 and 1989 c 91 s 18 are each amended to read as follows:

(~~No fire fighter~~) A participant shall not receive (~~any disability pension from the fund, or be entitled to receive any~~) relief (~~(or compensation)~~) for disability, sickness, or injuries received in the performance of his or her duties, unless there is filed with the board of trustees a report of accident, which report shall be subscribed to by the claimant, the (~~fire chief~~) head of the department, and the authorized attending physician, if there is one. (~~No~~) A claim for benefits arising from disability, sickness, or injuries incurred in consequence or as a result of the performance of duties shall not be allowed by the state board unless there has been filed with it a report of accident within ninety days after its occurrence and a claim based thereon within one year after the occurrence of the accident on which such claim is based. The state board may require such other or further evidence as it deems advisable before ordering any relief(~~(: compensation, or pension)~~).

Sec. 20. RCW 41.24.220 and 1989 c 91 s 19 are each amended to read as follows:

Whenever any (~~fire fighter~~) participant becomes injured, disabled, or sick in consequence or as the result of the performance of his or her duties by reason of which he or she is confined to any hospital or other medical facility, an amount not exceeding the daily ward rate of the hospital or regular fees for such service shall

be allowed and paid from ~~((said fund toward such hospital expenses: PROVIDED, That))~~ the principal fund. This allowance shall not be in lieu of but in addition to any other allowance provided in this chapter ~~((provided: PROVIDED FURTHER, That))~~. In addition, the costs of surgery, medicine, laboratory fees, x-ray, special therapies, and similar additional costs shall be paid ~~((in addition thereto: PROVIDED FURTHER, That))~~. When extended treatment, not available in the injured ~~((fire fighter's))~~, disabled, or sick participant's home area, is required, ~~((such fire fighter))~~ the participant may be reimbursed for actual mileage to and from the place of extended treatment pursuant to RCW 43.03.060 ~~((as now existing or hereafter amended))~~.

Sec. 21. RCW 41.24.230 and 1989 c 91 s 20 are each amended to read as follows:

Upon the death of any ~~((fire fighter))~~ participant resulting from injuries or sickness in consequence or as the result of the performance of his or her duties, the board of trustees shall authorize the issuance of a voucher for the sum of two thousand dollars, and upon the death of any ~~((fire fighter))~~ participant who is receiving any disability ~~((pension))~~ payments provided for in this chapter, the board of trustees shall authorize the issuance of a voucher for the sum of five hundred dollars, to help defray the funeral expenses and burial of ~~((such fire fighter))~~ the participant, which voucher shall be paid in the manner provided for payment of other charges against the principal fund.

Sec. 22. RCW 41.24.245 and 1987 c 326 s 19 are each amended to read as follows:

(1) If the state board or the secretary makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order, or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the state board, the secretary, or the principal fund for the state board or secretary to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.24.240 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the state board and the secretary shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.24.240 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their contributions to the principal fund: PROVIDED, That the state board or secretary shall not be responsible for making court-ordered divisions of withdrawals unless the order is filed with the state board at least thirty days before the withdrawal payment date.

Sec. 23. RCW 41.24.250 and 1989 c 91 s 22 are each amended to read as follows:

~~((There is established a))~~ The state board for volunteer fire fighters and reserve officers is created to consist of three members of a fire department covered by this chapter, no two of whom shall be from the same congressional district, to be appointed by the governor to serve overlapping terms of six years. Of members first appointed, one shall be appointed for a term of six years, one for four years, and one for two years. Upon the expiration of a term, a successor shall be appointed by the governor for a term of six years. Any vacancy shall be filled by the governor for the unexpired term. Each member of the state board, before entering on the performance of his or her duties, shall take an oath that he or she will not knowingly violate or willingly permit the violation of any provision of law applicable to this chapter, which oath shall be filed with the secretary of state.

The state board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

Sec. 24. RCW 41.24.280 and 1955 c 263 s 5 are each amended to read as follows:

The attorney general shall be the legal advisor for the state board.

Sec. 25. RCW 41.24.290 and 1989 c 91 s 23 are each amended to read as follows:

The state board shall:

(1) Generally supervise and control the administration of this chapter;

(2) Promulgate, amend, or repeal rules and regulations not inconsistent with this chapter for the purpose of effecting a uniform and efficient manner of carrying out the provisions of this chapter and the purposes to be accomplished thereby, and for the government of boards of trustees of the municipalities of this state in the discharge of their functions under this chapter;

(3) Review any action, and hear and determine any appeal which may be taken from the decision of the board of trustees of any municipality made pursuant to this chapter;

(4) Take such action as may be necessary to secure compliance of the municipalities governed by this chapter and to provide for the collection of all fees and penalties which are, or may be, due and delinquent from any such municipality;

(5) Review the action of the board of trustees of any municipality authorizing any pension as provided by this chapter; and authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of such municipality;

(6) Require periodic reports from the recipient of any benefits under this chapter for the purpose of determining their continued eligibility therefor;

(7) Maintain such records as may be necessary and proper for the proper maintenance and operation of the ~~((volunteer fire fighters' relief and pension))~~ principal fund, including records of the names ~~((and addresses))~~ of every person enrolled under this chapter, and provide all necessary forms to enable local boards of trustees to effectively carry out their duties as provided by this chapter;

(8) Compel the taking of testimony from witnesses under oath before the state board, or any member or the secretary thereof, or before the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time, in connection with any claim or pension pending or authorized for payment. For such purpose the state board shall have the same power of subpoena as prescribed in RCW 51.52.100. Failure of any claimant to appear and give any testimony as herein provided shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify;

(9) Appoint a secretary to hold office at the pleasure of the state board, fix the secretary's compensation at such sum as it shall deem appropriate, and prescribe the secretary's duties not otherwise provided by this chapter.

Sec. 26. RCW 41.24.300 and 1979 ex.s. c 157 s 2 are each amended to read as follows:

All expenses incurred by the state board shall be accomplished by vouchers signed by the secretary and one member of the state board and issued to the persons entitled thereto and sent to the proper state agency. The proper state agency shall issue a warrant on the principal fund or administrative fund for the amount specified.

Sec. 27. RCW 41.24.310 and 1989 c 91 s 24 are each amended to read as follows:

The secretary shall maintain an office at Olympia at a place to be provided, wherein the secretary shall;

(1) Keep a record of all proceedings of the state board, which shall be public((:));

(2) Maintain a record of all members of the pension fund, including such pertinent information relative thereto as may be required by law or ~~((regulation))~~ rule of the state board((:));

(3) Receive and promptly remit to the state treasurer all moneys received for the ~~((volunteer fire fighters' relief and pension))~~ principal fund((:));

(4) Transmit periodically to the proper state agency for payment all claims payable from the ~~((volunteer fire fighters' relief and pension))~~ principal fund, stating the amount and purpose of such payment((:));

(5) Certify monthly for payment a list of all persons approved for retirement pensions and the amount to which each is entitled((:)); and

(6) Perform such other and further duties as shall be prescribed by the state board.

The secretary shall receive such compensation as shall be fixed by the state board, together with travel expenses in carrying out his or her duties authorized by

the state board in accordance with RCW 43.03.050 and 43.03.060 (~~as now existing or hereafter amended~~).

Sec. 28. RCW 41.24.320 and 1989 c 91 s 25 are each amended to read as follows:

The state actuary shall provide actuarial services for the state board.

Sec. 29. RCW 41.24.330 and 1993 c 331 s 2 are each amended to read as follows:

An emergency medical service district board of trustees is created to administer this chapter in every county maintaining a regularly organized emergency medical service district (~~(there is hereby created an emergency medical service district board of trustees for the administration of this chapter)~~). The emergency medical service district board shall consist of (~~three~~) two of the members of the county legislative authority or their designees, the county auditor or the auditor's designee, the head of the emergency medical service district, and one emergency worker from the emergency medical service district to be elected by the emergency workers of the emergency medical service district for a term of one year and annually thereafter.

The emergency medical service district shall make provisions for the collection and payment of the fees provided under this chapter and shall continue to make such provisions for all emergency workers who come under this chapter as long as they shall continue to be members of the fire department.

Sec. 30. RCW 41.24.340 and 1993 c 331 s 3 are each amended to read as follows:

The chair of the (~~board of county commissioners~~) county legislative authority, or the chair's designee, shall be chair of the emergency medical service district board of trustees, and the county (~~clerk~~) auditor, or the auditor's designee, shall be the secretary-treasurer of the emergency medical service district board of trustees.

The secretary shall keep a public record of all proceedings(~~;~~) and of all receipts and disbursements made by the emergency medical service district board of trustees (~~and~~), shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of (~~said~~) the principal fund in the county, (~~the record to be placed on file in the county. Such forms as shall be necessary for the proper administration of this fund and of making the reports required hereunder shall be provided by the state board~~) and shall make all required reports to the state board. The state board shall provide all necessary forms to emergency worker boards of trustees.

Sec. 31. RCW 41.24.400 and 1998 c 307 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW 41.24.030(1)(~~4~~) solely for the purpose of enabling any reserve officer to enroll

under the retirement pension provisions of this chapter or fees required under RCW ~~((41.24.470))~~ 41.24.030(1) to pay for the costs of extending ~~((disability and death benefits))~~ the relief provisions of this chapter to its reserve officers.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) Except as provided under RCW 41.24.450, a reserve officer is not eligible to receive a benefit under the relief ~~((and compensation))~~ provisions of this chapter.

Sec. 32. RCW 41.24.450 and 1998 c 307 s 1 are each amended to read as follows:

A municipality employing reserve officers may adopt appropriate legislation extending ~~((disability and death benefits under))~~ the relief provisions of this chapter to ~~((their))~~ its reserve officers. ~~((Disability and death benefits under))~~ The relief provisions of this chapter may not be extended to reserve officers if the municipality has extended industrial insurance coverage to its reserve officers under RCW 51.12.140 or 51.12.035(2), or any other provision of law. A municipality that adopts appropriate legislation extending ~~((disability and death benefits))~~ the relief provisions of this chapter to its reserve officers ~~((under RCW 41.24.150 and 41.24.160))~~ shall enjoy the same extent of immunity from civil actions for personal injuries to its reserve officers that arises if the reserve officers were covered under Title 51 RCW.

~~((Each municipality that adopts appropriate legislation extending disability and death benefits under this chapter to its reserve officers must pay all fees established under RCW 41.24.470 established for this coverage.))~~

Sec. 33. RCW 41.24.460 and 1998 c 307 s 2 are each amended to read as follows:

A municipality that adopts appropriate legislation ~~((providing))~~ extending the relief provisions of this chapter to its reserve officers ~~((with disability and death benefits under RCW 41.24.150 and 41.24.160))~~ shall create a reserve officer board of trustees to administer this chapter composed as follows:

(1) A county reserve officer board of trustees shall consist of the following five members: (a) Two members of the county legislative authority and the county auditor, or their designees; (b) the sheriff; and (c) one reserve officer who is elected by reserve officers of the county for an annual one-year term.

(2) Any other reserve officer board of trustees shall consist of the following five members: (a) The mayor, if one exists for the municipality, and one member of the municipality's legislative authority, or two members of the municipality's legislative authority if a mayor does not exist for the municipality, or their designees; (b) the clerk, comptroller, or chief fiscal officer of the municipality; (c)

the head of the law enforcement agency; and (d) one reserve officer who is elected by reserve officers of the municipality for an annual term of one year.

(3) The secretary of the board of trustees shall keep a public record of all proceedings and of all receipts and disbursements made by the board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the municipality, and shall make all required reports to the state board. The state board shall provide the boards of trustees with all necessary forms.

NEW SECTION. Sec. 34. The following acts or parts of acts are each repealed:

(1) RCW 41.24.350 (Emergency medical service districts--State board shall set pension fees) and 1993 c 331 s 4;

(2) RCW 41.24.420 (Reserve officers--Enrollment--Procedure) and 1995 c 11 s 6;

(3) RCW 41.24.440 (Reserve officers--Lump sum payments--Payments to surviving spouse) and 1995 c 11 s 10; and

(4) RCW 41.24.470 (Reserve officers--Disability and death benefits--Fees) and 1998 c 307 s 3.

Passed the House February 26, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 149

[House Bill 1238]

BOARD OF INDUSTRIAL INSURANCE APPEALS--TEMPORARY MEMBERS

AN ACT Relating to the membership of the board of industrial insurance appeals; and amending RCW 51.52.010.

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

Sec. 1. RCW 51.52.010 and 1981 c 338 s 10 are each amended to read as follows:

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, state-wide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of

employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized state-wide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized.

Passed the House March 4, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 150

[Engrossed Substitute House Bill 1245]

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT— CONFIDENTIAL INFORMATION

AN ACT Relating to exemption of certain financial and proprietary information from public disclosure; and amending RCW 42.17.319.

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

Sec. 1. RCW 42.17.319 and 1993 c 280 s 36 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, ((no financial or proprietary information supplied by investors or entrepreneurs under chapter 43.330 RCW shall be made available to the public)) the following information supplied to the department of community, trade, and economic development by any person in connection with the siting, recruitment, expansion, retention, or relocation of that person's business shall not be made available to the public by the department or the office of the governor:

(a) Financial or proprietary information; and

(b) Until a siting decision is made, identifying information of any person supplying information under this section and the locations being considered for siting, relocation, or expansion of a business.

(2) For the purposes of this section, "siting decision" means the decision to acquire or not to acquire a site.

(3) If there is no written contact for a period of sixty days to the department from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in subsection (1)(b) of this section will be available to the public under the provisions of RCW 42.17.250 through 42.17.340.

(4) Nothing in this section shall apply to records of any other state agency or of a local agency.

Passed the House March 10, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 151

[Substitute House Bill 1251]

ELIMINATION AND CONSOLIDATION OF BOARDS, COMMISSIONS, AND PROGRAMS

AN ACT Relating to the elimination and consolidation of boards, commissions, and programs; amending RCW 18.28.010, 18.28.080, 18.28.090, 18.28.100, 18.28.110, 18.28.120, 18.28.130, 18.28.140, 18.28.150, 18.28.165, 18.28.190, 18.135.030, 18.138.070, 43.43.705, 43.43.785, 43.43.800, 43.63A.245, 43.220.040, 43.220.190, 43.220.210, 43.220.240, 75.30.050, 75.30.130, 79.72.020, 79.72.030, 79.72.040, and 79.72.050; adding a new section to chapter 43.70 RCW; creating new sections; repealing RCW 18.28.020, 18.28.030, 18.28.040, 18.28.045, 18.28.050, 18.28.060, 18.28.070, 18.28.160, 18.28.170, 18.28.230, 18.28.240, 18.138.120, 18.175.010, 18.175.020, 18.175.025, 18.175.027, 18.175.030, 18.175.040, 18.175.050, 18.175.060, 18.175.070, 18.175.080, 28C.20.010, 28C.20.020, 28C.20.030, 41.52.010, 41.52.020, 41.52.030, 41.52.040, 41.52.050, 41.52.060, 41.52.070, 42.17.261, 43.31.855, 43.31.857, 43.38.010, 43.38.020, 43.38.030, 43.38.040, 43.43.790, 43.43.795, 43.63A.260, and 70.95H.020; repealing 1996 c 316 s 2 (uncodified); providing an effective date; and declaring an emergency.

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

PART 1
REGULATION OF DEBT ADJUSTERS

Sec. 101. RCW 18.28.010 and 1979 c 156 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) "Debt adjusting" means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor.

(2) "Debt adjuster", which includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any person engaging in or holding himself or herself out as engaging in the business of debt adjusting for compensation. The term shall not include:

(a) Attorneys at law, escrow agents, accountants, broker-dealers in securities, or investment advisors in securities, while performing services solely incidental to the practice of their professions;

(b) Any person, partnership, association, or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, ~~((small loan companies, industrial))~~ consumer finance businesses, consumer loan companies, trust companies, mutual savings banks, savings and loan associations, building and loan associations, credit unions, crop credit associations, development credit corporations, industrial development corporations, title insurance companies, or insurance companies;

(c) Persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt adjusting, perform credit services for their employer;

(d) Public officers while acting in their official capacities and persons acting under court order;

(e) Any person while performing services incidental to the dissolution, winding up or liquidation of a partnership, corporation, or other business enterprise;

(f) Nonprofit organizations dealing exclusively with debts owing from commercial enterprises to business creditors;

(g) Nonprofit organizations engaged in debt adjusting and which do not assess against the debtor a service charge in excess of fifteen dollars per month.

(3) "Debt adjusting agency" is any partnership, corporation, or association engaging in or holding itself out as engaging in the business of debt adjusting.

~~((4) "License" means a debt adjuster license or debt adjusting agency license issued under the provisions of this chapter.~~

~~(5) "Licensee" means a debt adjuster or debt adjusting agency to whom a license has been issued under the provisions of this chapter.~~

~~(6) "Director" means the director of the department of licensing.))~~

Sec. 102. RCW 18.28.080 and 1979 c 156 s 4 are each amended to read as follows:

(1) By contract a ((~~licensee~~)) debt adjuster may charge a reasonable fee for debt adjusting services. The total fee for debt adjusting services may not exceed fifteen percent of the total debt listed by the debtor on the contract. The fee retained by the ((~~licensee~~)) debt adjuster from any one payment made by or on behalf of the debtor may not exceed fifteen percent of the payment(~~(-PROVIDED; That the licensee)).~~ The debt adjuster may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee. If an initial charge is made, no additional fee may be retained which will bring the total fee retained to date to more than fifteen percent of the total payments made to date. No fee whatsoever shall be applied against rent and utility payments for housing.

In the event of cancellation or default on performance of the contract by the debtor prior to its successful completion, the ((~~licensee~~)) debt adjuster may collect in addition to fees previously received, six percent of that portion of the remaining indebtedness listed on said contract which was due when the contract was entered into, but not to exceed twenty-five dollars.

(2) A ((~~licensee~~)) debt adjuster shall not be entitled to retain any fee until notifying all creditors listed by the debtor that the debtor has engaged the ((~~licensee~~)) debt adjuster in a program of debt adjusting.

Sec. 103. RCW 18.28.090 and 1967 c 201 s 9 are each amended to read as follows:

If a ((~~licensee~~)) debt adjuster contracts for, receives or makes any charge in excess of the maximums permitted by this chapter, except as the result of an accidental and bona fide error, the ((~~licensee's~~)) debt adjuster's contract with the debtor shall be void and the ((~~licensee~~)) debt adjuster shall return to the debtor the amount of all payments received from the debtor or on ((~~his~~)) the debtor's behalf and not distributed to creditors.

Sec. 104. RCW 18.28.100 and 1979 c 156 s 5 are each amended to read as follows:

Every contract between a ((~~licensee~~)) debt adjuster and a debtor shall:

(1) List every debt to be handled with the creditor's name and disclose the approximate total of all known debts;

(2) Provide in precise terms payments reasonably within the ability of the debtor to pay;

(3) Disclose in precise terms the rate and amount of all of the ((~~licensee's~~)) debt adjuster's charges and fees;

(4) Disclose the approximate number and amount of installments required to pay the debts in full;

(5) Disclose the name and address of the ((~~licensee~~)) debt adjuster and of the debtor;

(6) Provide that the ((licensee)) debt adjuster shall notify the debtor, in writing, within five days of notification to the ((licensee)) debt adjuster by a creditor that the creditor refuses to accept payment pursuant to the contract between the ((licensee)) debt adjuster and the debtor;

(7) Contain the following notice in ten point boldface type or larger directly above the space reserved in the contract for the signature of the buyer: NOTICE TO DEBTOR:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may cancel this contract within three days of signing by sending notice of cancellation by certified mail return receipt requested to the debt adjuster at his or her address shown on the contract, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the contract; and

(8) Contain such other and further provisions or disclosures as ~~((the director shall determine))~~ are necessary for the protection of the debtor and the proper conduct of business by the ((licensee)) debt adjuster.

Sec. 105. RCW 18.28.110 and 1979 c 156 s 6 are each amended to read as follows:

Every ((licensee)) debt adjuster shall perform the following functions:

(1) Make a permanent record of all payments by debtors, or on the debtors' behalf, and of all disbursements to creditors of such debtors, and shall keep and maintain in this state all such records, and all payments not distributed to creditors. No person shall intentionally make any false entry in any such record, or intentionally mutilate, destroy or otherwise dispose of any such record. Such records shall at all times be open for inspection by the ~~((director or his))~~ attorney general or the attorney general's authorized agent, and shall be preserved as original records or by microfilm or other methods of duplication ~~((acceptable to the director,))~~ for at least six years after making the final entry therein.

(2) Deliver a completed copy of the contract between the ((licensee)) debt adjuster and a debtor to the debtor immediately after the debtor executes the contract, and sign the debtor's copy of such contract.

(3) Unless paid by check or money order, deliver a receipt to a debtor for each payment within five days after receipt of such payment.

(4) Distribute to the creditors of the debtor at least once each forty days after receipt of payment during the term of the contract at least eighty-five percent of each payment received from the debtor.

(5) At least once every month render an accounting to the debtor which shall indicate the total amount received from or on behalf of the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept as payment in full on any debt owed ~~((him))~~ the creditor by the debtor, the amount of

charges deducted, and any amount held in trust. The ~~((licensee))~~ debt adjuster shall in addition render such an account to a debtor within ten days after written demand.

(6) Notify the debtor, in writing, within five days of notification to the ~~((licensee))~~ debt adjuster by a creditor that the creditor refuses to accept payment pursuant to the contract between the ~~((licensee))~~ debt adjuster and the debtor.

~~((7) Furnish the director with all contracts, assignments, and forms as described in RCW 18.28.030 which are currently in use.))~~

Sec. 106. RCW 18.28.120 and 1967 c 201 s 12 are each amended to read as follows:

A ~~((licensee))~~ debt adjuster shall not:

(1) Take any contract, or other instrument which has any blank spaces when signed by the debtor;

(2) Receive or charge any fee in the form of a promissory note or other promise to pay or receive or accept any mortgage or other security for any fee, whether as to real or personal property;

(3) Lend money or credit;

(4) Take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;

(5) Take, concurrent with the signing of the contract or as a part of the contract or as part of the application for the contract, a release of any obligation to be performed on the part of the ~~((licensee))~~ debt adjuster;

(6) Advertise ~~((his))~~ services, display, distribute, broadcast or televise, or permit ~~((his))~~ services to be displayed, advertised, distributed, broadcasted or televised in any manner whatsoever wherein any false, misleading or deceptive statement or representation with regard to the services to be performed by the ~~((licensee))~~ debt adjuster, or the charges to be made therefor, is made;

(7) Offer, pay, or give any cash, fee, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the ~~((licensee))~~ debt adjuster;

(8) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person in the debtor's behalf in connection with his or her activities as a ~~((licensee))~~ debt adjuster; or

(9) Disclose to anyone ~~((other than the director or his agent,))~~ the debtors who have contracted with the ~~((licensee))~~ debt adjuster; nor shall the ~~((licensee))~~ debt adjuster disclose the creditors of a debtor to anyone other than: (a) The debtor~~((;))~~; or (b) ~~((the director or his agent, or (c)))~~ another creditor of the debtor and then only to the extent necessary to secure the cooperation of such a creditor in a debt adjusting plan.

Sec. 107. RCW 18.28.130 and 1967 c 201 s 13 are each amended to read as follows:

Without limiting the generality of the foregoing and other applicable laws, the ~~((licensee))~~ debt adjuster, manager or an employee of ~~((a licensee))~~ the debt adjuster shall not:

(1) Prepare, advise, or sign a release of attachment or garnishment, stipulation, affidavit for exemption, compromise agreement or other legal or court document, nor furnish legal advice or perform legal services of any kind;

(2) Represent that he or she is authorized or competent to furnish legal advice or perform legal services;

(3) Assume authority on behalf of creditors or a debtor or accept a power of attorney authorizing it to employ or terminate the services of any attorney or to arrange the terms of or compensate for such services; or

(4) Communicate with the debtor or creditor or any other person in the name of any attorney or upon the stationery of any attorney or prepare any form or instrument which only attorneys are authorized to prepare.

Sec. 108. RCW 18.28.140 and 1967 c 201 s 14 are each amended to read as follows:

Nothing in this chapter shall be construed as prohibiting the assignment of wages by a debtor to a ~~((heense))~~ debt adjuster, if such assignment is otherwise in accordance with the law of this state.

Sec. 109. RCW 18.28.150 and 1979 c 156 s 8 are each amended to read as follows:

(1) Any payment received by a ~~((heense))~~ debt adjuster from or on behalf of a debtor shall be held in trust by the ~~((heense))~~ debt adjuster from the moment it is received. The ~~((heense))~~ debt adjuster shall not commingle such payment with ~~((his))~~ the debt adjuster's own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements whether to the debtor or to the creditors of the debtor, or to the ~~((heense))~~ debt adjuster, shall be made from such account.

(2) In the event that the debtor cancels or defaults on the contract between the debtor and the ~~((heense))~~ debt adjuster, the ~~((heense))~~ debt adjuster shall close out the debtor's trust account in the following manner:

(a) The ~~((heense))~~ debt adjuster may take from the account that amount necessary to satisfy any fees, other than any cancellation or default fee, authorized by this chapter.

(b) After deducting the fees provided in subsection (2)(a) of this section, the ~~((heense))~~ debt adjuster shall distribute the remaining amount in the account to the creditors of the debtor. The distribution shall be made within five days of the demand therefor by the debtor, but if the debtor fails to make the demand, then the ~~((heense))~~ debt adjuster shall make the distribution within thirty days of the date of cancellation or default.

Sec. 110. RCW 18.28.165 and 1979 c 156 s 7 are each amended to read as follows:

For the purpose of discovering violations of this chapter or securing information lawfully required ~~((by him hereunder, the director))~~ under this chapter, the office of the attorney general may at any time ~~((, either personally or by a person or persons duly designated by him,));~~ Investigate the debt adjusting

business and examine the books, accounts, records, and files used (~~((therein, of every licensee. For that purpose the director and his duly designated representatives shall))~~); have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of (~~((all licensees. The director and all persons duly designated by him may))~~) debt adjusters; and require the attendance of and examine under oath all persons whomsoever whose testimony (~~((he may require))~~) might be required relative to such debt adjusting business or to the subject matter of any examination, investigation, or hearing.

Sec. 111. RCW 18.28.190 and 1967 c 201 s 19 are each amended to read as follows:

Any person who violates any provision of this chapter or aids or abets such violation, or any rule lawfully (~~((promulgated hereunder))~~) adopted under this chapter or any order (~~((or decision of the director hereunder, or any person who operates as a debt adjuster without a license, shall be))~~) made under this chapter, is guilty of a misdemeanor.

NEW SECTION. **Sec. 112.** The following acts or parts of acts are each repealed:

- (1) RCW 18.28.020 (License required) and 1967 c 201 s 2;
- (2) RCW 18.28.030 (Application for license, form, contents—Investigation fees—Licensing fees—Bond—Qualifications—Forms to be furnished) and 1985 c 7 s 18, 1975 1st ex.s. c 30 s 23, 1971 ex.s. c 266 s 6, & 1967 c 201 s 3;
- (3) RCW 18.28.040 (Bond requirements—Security in lieu of bond) and 1967 c 201 s 4;
- (4) RCW 18.28.045 (Additional bond—When required) and 1979 c 156 s 2;
- (5) RCW 18.28.050 (Action on bond or security) and 1967 c 201 s 5;
- (6) RCW 18.28.060 (Applicants for licenses—Requirements) and 1979 c 156 s 3, 1971 ex.s. c 292 s 20, 1967 ex.s. c 141 s 1, & 1967 c 201 s 6;
- (7) RCW 18.28.070 (Licenses—Form—Contents—Display—Transferability) and 1967 c 201 s 7;
- (8) RCW 18.28.160 (Revocation of licenses—Grounds) and 1967 c 201 s 16;
- (9) RCW 18.28.170 (Rules, orders, decisions, etc.) and 1979 c 156 s 9 & 1967 c 201 s 17;
- (10) RCW 18.28.230 (License suspension—Nonpayment or default on educational loan or scholarship) and 1996 c 293 s 8; and
- (11) RCW 18.28.240 (License suspension—Noncompliance with support order—Reissuance) and 1997 c 58 s 818.

PART 2

HEALTH CARE ASSISTANTS ADVISORY COMMITTEE

Sec. 201. RCW 18.135.030 and 1994 sp.s. c 9 s 515 are each amended to read as follows:

(1) The secretary or the secretary's designee (~~(- with the advice of designees of the medical care quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, and the nursing care quality assurance commission;)~~) may appoint members of the health care assistant profession and other health care practitioners, as defined in RCW 18.135.020(3), to serve in an ad hoc capacity to assist in carrying out the provisions of this chapter. The members shall provide advice on matters specifically identified and requested by the secretary. The members shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(2) In addition to any other authority provided by law, the secretary shall adopt rules necessary to:

(a) Administer, implement, and enforce this chapter (~~(and)~~);

(b) Establish the minimum requirements necessary for a health care facility or health care practitioner to certify a health care assistant capable of performing the functions authorized in this chapter (~~(- The rules shall)~~); and

(c) Establish minimum requirements for each and every category of health care assistant.

~~((Said))~~ (3) The rules shall be adopted after fair consideration of input from representatives of each category. These requirements shall ensure that the public health and welfare are protected and shall include, but not be limited to, the following factors:

~~((+))~~ (a) The education and occupational qualifications for the health care assistant category;

~~((2))~~ (b) The work experience for the health care assistant category;

~~((3))~~ (c) The instruction and training provided for the health care assistant category; and

~~((4))~~ (d) The types of drugs or diagnostic agents which may be administered by injection by health care assistants working in a hospital or nursing home. The rules established (~~(pursuant to)~~) under this subsection shall not prohibit health care assistants working in a health care facility other than a nursing home or hospital from performing the functions authorized under this chapter.

PART 3

DIETICIANS AND NUTRITIONISTS ADVISORY COMMITTEE

Sec. 301. RCW 18.138.070 and 1994 sp.s. c 9 s 516 are each amended to read as follows:

In addition to any other authority provided by law, the secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a certificate to an applicant who has met the requirements for certification and deny a certificate to an applicant who does not meet the minimum qualifications;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those certified under this chapter, to serve as consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and certificate holders;

(6) Conduct a hearing, pursuant to chapter 34.05 RCW, on an appeal of a denial of certification based on the applicant's failure to meet the minimum qualifications for certification;

(7) Investigate alleged violations of this chapter and consumer complaints involving the practice of persons representing themselves as certified dietitians or certified nutritionists;

(8) Issue subpoenas, statements of charges, statements of intent to deny certifications, and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements on intent to deny certifications;

(9) Conduct disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it in accordance with chapter 34.05 RCW;

(10) Set all certification, renewal, and late renewal fees in accordance with RCW 43.70.250; and

(11) Set certification expiration dates and renewal periods for all certifications under this chapter(~~and~~

~~(12) Appoint members of the profession to serve in an ad hoc advisory capacity to the secretary in carrying out this chapter. The members will serve for designated time[s] and provide advice on matters specifically identified and requested by the secretary. The members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and 43.03.060. The secretary, ad hoc committee members, or individuals acting in their behalf are immune from suit in a civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties)).~~

PART 4

HEALTH PROFESSIONS ADVISORY COMMITTEE

NEW SECTION. Sec. 401. RCW 18.138.120 (Health professions advisory committee—Membership—Duties—Expenses) and 1994 sp.s. c 9 s 517 are each repealed.

NEW SECTION. Sec. 402. A new section is added to chapter 43.70 RCW to read as follows:

The secretary shall create and maintain a list of contacts with each of the health care professions regulated under the following chapters for the purpose of policy advice and information dissemination: RCW 18.06.080, 18.89.050, and 18.138.070 and chapters 18.135, 18.55, and 18.88A RCW.

**PART 5
REGULATION OF ATHLETE AGENTS**

NEW SECTION. Sec. 501. The following acts or parts of acts are each repealed:

- (1) RCW 18.175.010 (Findings) and 1991 c 236 s 1;
- (2) RCW 18.175.020 (Athlete agents and athlete agent firms—Certificate of registration required—Violations) and 1991 c 236 s 2;
- (3) RCW 18.175.025 (Certificate of registration suspension—Nonpayment or default on educational loan or scholarship) and 1996 c 293 s 24;
- (4) RCW 18.175.027 (Certificate of registration suspension—Noncompliance with support order—Reissuance) and 1997 c 58 s 839;
- (5) RCW 18.175.030 (Definitions) and 1991 c 236 s 3;
- (6) RCW 18.175.040 (Exemptions) and 1991 c 236 s 4;
- (7) RCW 18.175.050 (Authority of director) and 1991 c 236 s 5;
- (8) RCW 18.175.060 (Disclosure statements) and 1991 c 236 s 6;
- (9) RCW 18.175.070 (Penalties) and 1991 c 236 s 7; and
- (10) RCW 18.175.080 (Application of consumer protection act) and 1991 c 236 s 8.

**PART 6
WASHINGTON STATE COUNCIL ON VOCATIONAL EDUCATION**

NEW SECTION. Sec. 601. The following acts or parts of acts are each repealed:

- (1) RCW 28C.20.010 (Council created—Work force training and education coordinating board to monitor) and 1991 c 238 s 16;
- (2) RCW 28C.20.020 (Membership of council) and 1991 c 238 s 17; and
- (3) RCW 28C.20.030 (Functions consistent with state comprehensive plan for work force training and education) and 1991 c 238 s 18.

**PART 7
PUBLIC PENSION COMMISSION**

NEW SECTION. Sec. 701. The following acts or parts of acts are each repealed:

- (1) RCW 41.52.010 (Created—Composition—Qualifications and appointment of members) and 1980 c 87 s 16, 1969 c 10 s 2, & 1963 ex.s. c 17 s 1;
- (2) RCW 41.52.020 (Terms—Vacancies) and 1963 ex.s. c 17 s 2;
- (3) RCW 41.52.030 (Expenses—Officers—Personnel—Quorum) and 1967 c 128 s 1 & 1963 ex.s. c 17 s 3;
- (4) RCW 41.52.040 (Powers and duties) and 1998 c 245 s 43, 1967 c 128 s 2, & 1963 ex.s. c 17 s 4;

(5) RCW 41.52.050 (Right of access to files and records of public pension systems—Minutes, reports, etc., to be forwarded to commission) and 1967 c 128 s 3;

(6) RCW 41.52.060 (Examination of records—Subpoena of witnesses, fees) and 1967 c 128 s 4; and

(7) RCW 41.52.070 (Appointment of investment counsel—Qualifications—Duties) and 1998 c 245 s 44 & 1967 c 160 s 1.

PART 8

PUBLIC INFORMATION ACCESS POLICY TASK FORCE

NEW SECTION. **Sec. 801.** RCW 42.17.261 (Public information access policy task force) and 1994 c 40 s 4 are each repealed.

PART 9

RURAL DEVELOPMENT COUNCIL

NEW SECTION. **Sec. 901.** The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2000:

(1) RCW 43.31.855 (Rural development council) and 1997 c 377 s 1; and

(2) RCW 43.31.857 (Rural development council—Financial contributions encouraged) and 1997 c 377 s 2.

NEW SECTION. **Sec. 902.** The rural development council is encouraged to explore the establishment of a private nonprofit corporation to perform its duties.

PART 10

TAX ADVISORY COUNCIL

NEW SECTION. **Sec. 1001.** The following acts or parts of acts are each repealed:

(1) RCW 43.38.010 (Tax advisory council created—Appointment, travel expenses) and 1983 c 2 s 11;

(2) RCW 43.38.020 (Powers and duties) and 1982 1st ex.s. c 41 s 2 & 1965 c 8 s 43.38.020;

(3) RCW 43.38.030 (Examination of records) and 1965 c 8 s 43.38.030; and

(4) RCW 43.38.040 (Officers—Meetings—Executive secretary) and 1975 1st ex.s. c 278 s 24 & 1965 c 8 s 43.38.040.

PART 11

ADVISORY COUNCIL ON CRIMINAL JUSTICE SERVICES

Sec. 1101. RCW 43.43.705 and 1989 c 334 s 7 are each amended to read as follows:

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies, or to the department of social and health services, hereinafter referred to as the "department", a transcript of the criminal offender record information, dependency record information, or protection proceeding record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through ~~((43.43.800))~~ 43.43.785 the following words and phrases shall have the following meanings:

"Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

"Dependency record information" includes and shall be restricted to identifying data regarding a person, over the age of eighteen, who was a party to a dependency proceeding brought under chapter 13.34 RCW and who has been found, pursuant to such dependency proceeding, to have sexually abused or exploited or physically abused a child.

"Protection proceeding record information" includes and shall be restricted to identifying data regarding a person, over eighteen, who was a respondent to a protection proceeding brought under chapter 74.34 RCW and who has been found pursuant to such a proceeding to have abused or financially exploited a vulnerable adult.

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3). The applicant may appeal such determination ~~((and denial of information to the advisory council created in RCW 43.43.785 and the council may direct that the section furnish such information to the applicant))~~ by notifying the chief in writing within thirty days. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW and in accordance with procedures for adjudicative proceedings under chapter 34.05 RCW.

Sec. 1102. RCW 43.43.785 and 1972 ex.s. c 152 s 18 are each amended to read as follows:

The legislature finds that there is a need for the Washington state patrol to establish a program which will consolidate existing programs of criminal justice services within its jurisdiction so that such services may be more effectively

utilized by the criminal justice agencies of this state. The chief ~~(, with the advice of the state advisory council on criminal justice services created in RCW 43.43.790;)~~ shall establish such a program which shall include but not be limited to the identification section, all auxiliary systems including the Washington crime information center and the teletypewriter communications network, the drug control assistance unit, and any other services the chief deems necessary which are not directly related to traffic control.

Sec. 1103. RCW 43.43.800 and 1972 ex.s. c 152 s 21 are each amended to read as follows:

The ~~((advisory council))~~ **executive committee created in RCW 10.98.160** shall review the provisions of RCW 43.43.700 through 43.43.785 and the administration thereof and shall consult with and advise the chief of the state patrol on matters pertaining to the policies of criminal justice services program.

~~((The council shall appoint technical advisory committees comprised of members of criminal justice agencies having demonstrated technical expertise in the various fields of specialty within the program.))~~

NEW SECTION. Sec. 1104. The following acts or parts of acts are each repealed:

(1) RCW 43.43.790 (Criminal justice services—Advisory council—Created—Membership—Terms—Vacancies) and 1972 ex.s. c 152 s 19; and

(2) RCW 43.43.795 (Criminal justice services—Advisory council—Meetings) and 1972 ex.s. c 152 s 20.

PART 12

SENIOR ENVIRONMENTAL CORPS COORDINATING COUNCIL

Sec. 1201. RCW 43.63A.245 and 1993 c 280 s 64 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.63A.240 through 43.63A.270.

"Agency" means one of the agencies or organizations participating in the activities of the senior environmental corps.

"Coordinator" means the person designated by the director of community, trade, and economic development ~~((with the advice of the council))~~ to administer the activities of the senior environmental corps.

"Corps" means the senior environmental corps.

~~("Council" means the senior environmental corps coordinating council.)~~

"Department" means the department of community, trade, and economic development.

"Director" means the director of community, trade, and economic development or the director's authorized representative.

"Representative" means the person who ~~((represents an agency on the council and))~~ is responsible for the activities of the senior environmental corps in his or her agency.

"Senior" means any person who is fifty-five years of age or over.

"Volunteer" means a person who is willing to work without expectation of salary or financial reward, and who chooses where he or she provides services and the type of services he or she provides.

NEW SECTION. **Sec. 1202.** RCW 43.63A.260 (Senior environmental corps—Coordinating council—Duties) and 1994 c 264 s 26, 1993 c 280 s 66, & 1992 c 63 s 5 are each repealed.

PART 13
WASHINGTON CONSERVATION CORPS
COORDINATING COUNCIL

Sec. I301. RCW 43.220.040 and 1987 c 367 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) "Public lands" means any lands or waters, or interests therein, owned or administered by any agency or instrumentality of the state, federal, or local government.

(2) "Corps" means the Washington conservation corps.

(3) "Corps member" means an individual enrolled in the Washington conservation corps.

(4) "Corps member leaders" or "specialists" means members of the corps who serve in leadership or training capacities or who provide specialized services other than or in addition to the types of work and services that are performed by the corps members in general.

~~((5) "Council" means the Washington conservation corps coordinating council.))~~

Sec. 1302. RCW 43.220.190 and 1987 c 367 s 3 are each amended to read as follows:

The agencies listed in RCW 43.220.020 shall ~~((convene a conservation corps coordinating council to meet as needed to))~~ establish consistent work standards and placement and evaluation procedures of corps programs. ~~((The coordinating council shall be composed of administrative personnel of the agencies. The coordinating council shall serve to))~~ They shall also reconcile problems that arise in the implementation of the corps programs and develop coordination procedures for emergency responses of corps members.

Sec. 1303. RCW 43.220.210 and 1987 c 367 s 4 are each amended to read as follows:

The ~~((Washington conservation corps coordinating council))~~ agencies listed in RCW 43.220.020 shall select, review, approve, and evaluate the success of projects under this chapter.

Up to fifteen percent of funds spent for recruitment, job training and placement services shall, wherever possible, be contracted through local educational institutions and/or nonprofit corporations.

Such contracts may include, but not be limited to, general education development testing, preparation of resumes and job search skills.

All contracts or agreements entered into by agencies listed in RCW 43.220.020 shall be ~~((reviewed by the council for compliance))~~ consistent with legislative intent as set forth in this section.

Sec. I304. RCW 43.220.240 and 1985 c 230 s 4 are each amended to read as follows:

Staff support to the department of employment security shall be provided by the ~~((Washington conservation corps coordinating council as established in RCW 43.220.190))~~ agencies listed in RCW 43.220.020. The employment security department shall be the central administrative authority for data on projects, project requests, applicants and reports to the legislature. The department shall be reimbursed by the Washington conservation corps agencies specified in RCW 43.220.020. Reimbursement shall be for reasonable administrative costs associated with the department's role as the central administrative authority and for extraordinary placement costs incurred for the corps agencies. The ~~((Washington conservation corps coordinating council is to))~~ agencies listed in RCW 43.220.020 shall develop the most cost-effective administrative system to provide training, payroll, and purchasing services to the conservation corps agencies and present the system to the department for approval. The department shall select the administrative system which best meets the purposes of this chapter, and is cost-efficient.

PART 14

CLEAN WASHINGTON CENTER POLICY BOARD

NEW SECTION. **Sec. 1401.** RCW 70.95H.020 (Policy board) and 1995 c 399 s 193 & 1991 c 319 s 204 are each repealed.

PART 15

PUGET SOUND TRAWL EMERGING FISHERIES ADVISORY BOARD

NEW SECTION. **Sec. 1501.** By July 1, 1999, the director of the department of fish and wildlife shall abolish the Puget Sound trawl emerging fisheries advisory board.

PART 16

PUGET SOUND CRAB FISHERY LICENSE ADVISORY REVIEW BOARD COMMERCIAL HERRING FISHERY ADVISORY REVIEW BOARD COMMERCIAL OCEAN PINK SHRIMP ADVISORY REVIEW BOARD

Sec. 1601. RCW 75.30.050 and 1995 c 269 s 3101 are each amended to read as follows:

(1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) ~~((The commercial crab fishing industry in cases involving Dungeness crab—Puget Sound fishery licenses;~~

~~—(b) The commercial herring fishery in cases involving herring fishery licenses;~~

~~—(e)) The commercial sea urchin and sea cucumber fishery in cases involving sea urchin and sea cucumber dive fishery licenses;~~

~~((d) The commercial ocean pink shrimp industry (Pandalus jordani) in cases involving ocean pink shrimp delivery licenses; and~~

~~—(e)) (b) The commercial coastal crab fishery in cases involving Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses.~~

The members shall include one person from the commercial crab processors, one Dungeness crab-coastal fishery license holder, and one citizen representative of a coastal community.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050, 43.03.060, and 43.03.065.

Sec. 1602. RCW 75.30.130 and 1998 c 190 s 101 are each amended to read as follows:

(1) A person shall not commercially take Dungeness crab (*Cancer magister*) in Puget Sound without first obtaining a Dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A Dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) Except as provided in subsections (3) and (6) of this section, after January 1, 1982, the director shall issue no new Dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualification may renew an existing license: The person shall have held the Dungeness crab—Puget Sound fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(4) This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than Dungeness crab.

(5) Dungeness crab—Puget Sound fishery licenses are transferable from one license holder to another.

(6) If fewer than one hundred twenty-five persons are eligible for Dungeness crab—Puget Sound fishery licenses, the director may accept applications for new

licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain one hundred twenty-five licenses in the Puget Sound Dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new Dungeness crab—Puget Sound fishery licenses (~~(, based upon recommendations of a board of review established under RCW 75.30.050)).~~

PART 17

SCENIC RIVERS COMMITTEE OF PARTICIPATING AGENCIES

Sec. 1701. RCW 79.72.020 and 1994 c 264 s 64 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 state parks and recreation commission.

~~(2) ("Committee of participating agencies" or "committee" means a committee composed of the executive head, or the executive's designee, of each of the state departments of ecology, fish and wildlife, natural resources, and transportation, the state parks and recreation commission, the interagency committee for outdoor recreation, the Washington state association of counties, and the association of Washington cities. In addition, the governor shall appoint two public members of the committee. Public members of the committee shall be compensated in accordance with RCW 43.03.220 and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.~~

~~—When a specific river or river segment of the state's scenic river system is being considered by the committee, a representative of each participating local government associated with that river or river segment shall serve as a member of the committee.~~

~~—(3))~~ (3) "Participating local government" means the legislative authority of any city or county, a portion of whose territorial jurisdiction is bounded by or includes a river or river segment of the state's scenic river system.

~~((4))~~ (3) "River" means a flowing body of water or a section, segment, or portion thereof.

~~((5))~~ (4) "River area" means a river and the land area in its immediate environs as established by the participating agencies not exceeding a width of one-quarter mile landward from the streamway on either side of the river.

~~((6))~~ (5) "Scenic easement" means the negotiated right to control the use of land, including the air space above the land, for the purpose of protecting the scenic view throughout the visual corridor.

~~((7))~~ (6) "Streamway" means that stream-dependent corridor of single or multiple, wet or dry, channel or channels within which the usual seasonal or stormwater run-off peaks are contained, and within which environment the flora, fauna, soil, and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

~~((8))~~ (7) "System" means all the rivers and river areas in the state designated by the legislature for inclusion as scenic rivers but does not include tributaries of a designated river unless specifically included by the legislature. The inclusion of a river in the system does not mean that other rivers or tributaries in a drainage basin shall be required to be part of the management program developed for the system unless the rivers and tributaries within the drainage basin are specifically designated for inclusion by the legislature.

~~((9))~~ (8) "Visual corridor" means that area which can be seen in a normal summer month by a person of normal vision walking either bank of a river included in the system. The visual corridor shall not exceed the river area.

Sec. 1702. RCW 79.72.030 and 1977 ex.s. c 161 s 3 are each amended to read as follows:

(1) The department shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The department may adopt regulations identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be ~~((subject to review by the committee of participating agencies. Once such a policy has been approved by a majority vote of the committee members, it shall be))~~ adopted by the department in accordance with the provisions of chapter 34.05 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the ~~((committee of participating agencies by majority vote,))~~ department and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The ~~((committee of participating agencies shall, by two-thirds majority vote,))~~ department shall identify on a river by river basis any publicly owned or leased lands which could be included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The department shall exclude lands so identified from the provisions of any management policies implementing the provisions of this chapter.

(4) The ~~((committee of participating agencies, by majority vote,))~~ department shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in RCW 79.72.080, the ~~((committee))~~ department shall make such determination, and those determinations

authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the ~~((committee))~~ department shall hold hearings in accord with chapter 34.05 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The department shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

~~((6) Meetings of the committee shall be called by the department or by written petition signed by five or more of the committee members. The chairman of the parks and recreation commission or the chairman's designee shall serve as the chairman of any meetings of the committee held to implement the provisions of this chapter.))~~

The ~~((committee))~~ department shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may~~((; through the department;))~~ submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the ~~((committee's))~~ department's judgment, make an area a worthy addition to the system.

Sec. 1703. RCW 79.72.040 and 1989 c 175 s 169 are each amended to read as follows:

(1) The management program for the system shall be administered by the department. The department shall have the responsibility for coordinating the development of the program between affected state agencies and participating local governments, and shall develop and adopt rules, in accord with chapter 34.05 RCW, the Administrative Procedure Act, for each portion of the system, which shall implement the management policies. In developing rules for a specific river in the system, the department shall hold at least one public hearing in the general locale of the river under consideration. The hearing may constitute the hearing required by chapter 34.05 RCW. The department shall cause a brief summary of the proposed rules to be published twice in a newspaper of general circulation in the area that includes the river to be considered in the period of time between two and four weeks prior to the public hearing. In addition to the foregoing required publication, the department shall also provide notice of the hearings, rules, and decisions of the department to radio and television stations and major local newspapers in the areas that include the river to be considered.

(2) In addition to any other powers granted to carry out the intent of this chapter, the department is authorized~~((; subject to approval by majority vote of the members of the committee;))~~ to: (a) Purchase, within the river area, real property in fee or any lesser right or interest in real property including, but not limited to

scenic easements and future development rights, visual corridors, wildlife habitats, unique ecological areas, historical sites, camping and picnic areas, boat launching sites, and/or easements abutting the river for the purpose of preserving or enhancing the river or facilitating the use of the river by the public for fishing, boating and other water related activities; and (b) purchase, outside of a river area, public access to the river area.

The right of eminent domain shall not be utilized in any purchase made pursuant to this section.

(3) The department is further authorized to: (a) Acquire by gift, devise, grant, or dedication the fee, an option to purchase, a right of first refusal or any other lesser right or interest in real property and upon acquisition such real property shall be held and managed within the scenic river system; and (b) accept grants, contributions, or funds from any agency, public or private, or individual for the purposes of this chapter.

(4) The department is hereby vested with the power to obtain injunctions and other appropriate relief against violations of any provisions of this chapter and any rules adopted under this section or agreements made under the provisions of this chapter.

Sec. 1704. RCW 79.72.050 and 1977 ex.s. c 161 s 5 are each amended to read as follows:

(1) All state government agencies and local governments are hereby directed to pursue policies with regard to their respective activities, functions, powers, and duties which are designed to conserve and enhance the conditions of rivers which have been included in the system, in accordance with the management policies and the rules and regulations adopted by the department for such rivers. Local agencies are directed to pursue such policies with respect to all lands in the river area owned or leased by such local agencies. Nothing in this chapter shall authorize the modification of a shoreline management plan adopted by a local government and approved by the state pursuant to chapter 90.58 RCW without the approval of the department of ecology and local government. The policies adopted pursuant to this chapter shall be integrated, as fully as possible, with those of the shoreline management act of 1971.

(2) Nothing in this chapter shall grant to the (~~committee of participating agencies or the~~) department the power to restrict the use of private land without either the specific written consent of the owner thereof or the acquisition of rights in real property authorized by RCW 79.72.040.

(3) Nothing in this chapter shall prohibit the department of natural resources from exercising its full responsibilities and obligations for the management of state trust lands.

**PART 18
DEPARTMENT OF CORRECTIONS COMMITTEES**

NEW SECTION. Sec. 1801. By July 1, 1999, the secretary of corrections shall abolish the work release advisory committee, the Pierce county advisory committee, the Moses Lake search committee, the Spokane search committee, the Bremerton advisory committee, the Kitsap county work release facility analysis and site evaluation committee, the Wenatchee search committee, the Snohomish siting committee, and the Airway Heights corrections center correctional industries advisory board.

**PART 19
LAKES HEALTH PLAN COMMITTEE**

NEW SECTION. Sec. 1901. 1996 c 316 s 2 (uncodified) is repealed.

**PART 20
LOWER COLUMBIA RIVER BISTATE STEERING COMMITTEE**

NEW SECTION. Sec. 2001. The bistate steering committee created in section 302(28)(a), chapter 16, Laws of 1990 1st ex. sess. is abolished.

**PART 21
COMMUNITY DIVERSIFICATION PROGRAM
ADVISORY COMMITTEE**

NEW SECTION. Sec. 2101. By July 1, 1999, the director of the department of community, trade, and economic development shall abolish the community diversification program advisory committee.

**PART 22
BUSINESS AND JOB RETENTION ADVISORY COMMITTEE**

NEW SECTION. Sec. 2201. The business and job retention advisory committee created in section 220(8)(a), chapter 289, Laws of 1988 is abolished.

**PART 23
COMMUNITY NETWORKS COMMITTEES**

NEW SECTION. Sec. 2301. By July 1, 1999, the director of the department of services for the blind shall abolish the community networks committees.

**PART 24
MISCELLANEOUS**

NEW SECTION. Sec. 2401. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 2402. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

Passed the House March 16, 1999.
Passed the Senate April 13, 1999.
Approved by the Governor April 30, 1999.
Filed in Office of Secretary of State April 30, 1999.

CHAPTER 152

[Engrossed House Bill 1263]

DISTRICT AND MUNICIPAL COURTS—PROCESS

AN ACT Relating to district and municipal courts; and amending RCW 3.50.115, 3.54.030, and 35.20.110.

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

Sec. 1. RCW 3.50.115 and 1984 c 258 s 123 are each amended to read as follows:

The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of (name of city), State of Washington," surrounding the vignette. All process from the court runs throughout the state. The supreme court may determine by rule what process must be issued under seal.

Sec. 2. RCW 3.54.030 and 1992 c 29 s 1 are each amended to read as follows:

The district court shall have a seal that shall be the vignette of George Washington, with the words "Seal of the District Court of County, State of Washington," surrounding the vignette. All process from the court (~~must be issued under its seal and~~) runs throughout the state. The supreme court may determine by rule what process must be issued under seal.

Sec. 3. RCW 35.20.110 and 1965 c 7 s 35.20.110 are each amended to read as follows:

The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of (name of city), State of Washington," surrounding the vignette. All process from such court (~~shall issue under the seal thereof and shall~~) runs throughout the state. The supreme court may determine by rule what process must be issued under seal.

Passed the House March 9, 1999.
Passed the Senate April 13, 1999.
Approved by the Governor April 30, 1999.
Filed in Office of Secretary of State April 30, 1999.

CHAPTER 153

[Engrossed House Bill 1264]

WATER-SEWER DISTRICTS

AN ACT Relating to the combining of water and sewer districts; amending RCW 57.04.050, 57.08.005, 57.08.014, 57.08.015, 57.08.016, 57.08.030, 57.08.044, 57.08.047, 57.08.050, 57.08.065, 57.08.085, 57.08.110, 57.08.180, 57.16.060, 57.16.110, 57.20.120, 57.20.140, 57.24.040, 57.24.050,

57.28.050, 57.32.023, 57.36.040, 57.90.010, 27.12.470, 32.20.070, 32.20.110, 35.13A.020, 35.13A.030, 35.13A.040, 35.13A.060, 35.13A.090, 35.58.210, 35.58.220, 35.58.230, 35.58.410, 35.67.300, 35.91.020, 35.92.012, 35.92.170, 35.97.010, 35.97.050, 36.16.138, 36.93.020, 36.93.093, 36.93.105, 36.93.185, 36.94.220, 36.94.430, 36.96.010, 36.94.410, 36.94.420, 39.69.010, 39.50.010, 39.80.020, 43.20.240, 43.70.195, 43.155.030, 44.04.170, 48.62.021, 52.08.011, 53.48.001, 53.48.010, 54.04.030, 70.44.400, 70.95B.020, 70.119.020, 79.44.003, 84.04.120, 84.33.100, 84.34.310, 84.64.080, 84.69.010, 87.03.015, 87.03.720, and 87.03.725; reenacting RCW 57.08.081; and creating a new section.

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

PART I - WATER-SEWER DISTRICT LAWS

Sec. 1. RCW 57.04.050 and 1996 c 230 s 204 are each amended to read as follows:

Upon entry of the findings of the final hearing on the petition if one or more county legislative authorities find that the proposed district will be conducive to the public health, welfare, and convenience and will benefit the land therein, they shall ~~((and)) present a resolution to the county auditor calling for a special election ((by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. A special election shall be held on a date decided by the commissioners in accordance with RCW 29.13.020))~~ to be held at a date specified under RCW 29.13.020, that occurs forty-five or more days after the resolution is presented, at which a ballot proposition authorizing the district to be created shall be submitted to voters for their approval or rejection. The commissioners shall cause to be published a notice of the election for four successive weeks in a newspaper of general circulation in the proposed district, which notice shall state the hours during which the polls will be open, the boundaries of the district as finally adopted and the object of the election, and the notice shall also be posted ten days in ten public places in the proposed district. ~~((In submitting the proposition to the voters, it shall be expressed on the ballots in the following terms:~~

~~..... District YES~~
~~..... District NO~~

~~giving the name of the district as provided in the petition. The proposition to be effective must be))~~ The district shall be created if the ballot proposition authorizing the district to be created is approved by a majority of the voters voting on the proposition.

A separate ballot proposition authorizing the district, if created, to impose a single-year excess levy for the preliminary expenses of the district shall be submitted to voters for their approval or rejection at the same special election ((a proposition shall be submitted to the voters, for their approval or rejection, authorizing the district, if formed, to impose on all property located in the district a general tax for one year, in excess of the limitations provided by law)), if the petition to create the district also proposed that a ballot proposition authorizing an excess levy be submitted to voters for their approval or rejection. The excess levy shall be proposed in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value,

~~((for general preliminary expenses of the district, that proposition to be expressed on the ballots in the following terms:~~

~~— One year dollars and cents per thousand dollars
of assessed value tax YES
NO~~

~~— Such a ballot proposition)) and may only be submitted to voters for their approval or rejection if the special election is held in February, March, April, or May. The proposition to be effective must be approved ((by at least three-fifths of the voters voting on the proposition)) in the manner set forth in Article VII, section 2(a) of the state Constitution.~~

Sec. 2. RCW 57.08.005 and 1997 c 447 s 16 are each amended to read as follows:

A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;

(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof 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. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such

district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such 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. 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 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;

(4) To purchase and take water from any municipal corporation, private person, or entity. A 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 the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater (~~(and for the protection, preservation, and rehabilitation of surface and underground waters, facilities for the drainage and treatment of storm or surface waters, public highways, streets, and roads)~~) with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewage facilities may include facilities which result in combined sewage disposal(;) or treatment(~~(, or drainage)~~) and electric generation, except that the electricity generated thereby is a byproduct of the system of sewers. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of sewage disposal(;) or treatment(~~(, or drainage)~~). For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within

the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal(;) or treatment(;; or drainage)) and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a 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 owners;

(6) To construct, condemn and purchase, add to, maintain, and operate systems of drainage for the benefit and use of the district, the inhabitants thereof, and persons outside the district with an adequate system of drainage, including but not limited to facilities and systems for the collection, interception, treatment, and disposal of storm or surface waters, and for the protection, preservation, and rehabilitation of surface and underground waters, and drainage facilities for public highways, streets, and roads, with full authority to regulate the use and operation thereof and the service rates to be charged. Drainage facilities may include natural systems. Drainage facilities may include facilities which result in combined drainage facilities and electric generation, except that the electricity generated thereby is a byproduct of the drainage system. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of drainage collection, disposal, and treatment. For such purposes, a district may conduct storm or surface water throughout the district and throughout other political subdivisions within the district, construct and lay drainage pipe and culverts along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such drainage systems. A district may provide or erect facilities and improvements for the treatment and disposal of storm or surface water within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from storm or surface waters. For the purposes of drainage facilities which include facilities that also generate electricity as a byproduct, nothing in this section may be construed to authorize a 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 owners;

(7) To construct, condemn, acquire, and own buildings and other necessary district facilities;

~~((7))~~ (8) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

~~((8))~~ (9) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, ground water as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

~~((9))~~ (10) To fix rates and charges for water, sewer, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the 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. The connection charge may include interest charges applied from the date of construction of the 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 system, or at the time of installation of the lines to which the property owner is seeking to connect. 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. Those 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. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

~~((10))~~ (11) To contract with individuals, associations and corporations, the state of Washington, and the United States;

~~((11))~~ (12) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

~~((12))~~ (13) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

~~((13))~~ (14) To sue and be sued;

~~((14))~~ (15) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

~~((15))~~ (16) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

~~((16))~~ (17) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

~~((17))~~ (18) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

~~((18))~~ (19) To establish street lighting systems under RCW 57.08.060;

~~((19))~~ (20) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

~~((20))~~ (21) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage.

Sec. 3. RCW 57.08.014 and 1996 c 230 s 304 are each amended to read as follows:

In addition to the authority of a district to establish classifications for rates and charges and impose such rates and charges, a district may adjust or delay those rates and charges for low-income persons or classes of low-income persons, including but not limited to, ~~((poor))~~ low-income handicapped persons and ~~((poor))~~ low-income senior citizens. Other financial assistance available to low-income persons shall be considered in determining charges and rates under this section. Notification of special rates or charges established under this section shall be provided to all persons served by the district annually and upon initiating service. Information on cost shifts caused by establishment of the special rates or charges shall be included in the notification. Any reduction in charges and rates granted to low-income persons in one part of a service area shall be uniformly extended to low-income persons in all other parts of the service area.

Sec. 4. RCW 57.08.015 and 1996 c 230 s 305 are each amended to read as follows:

The board of commissioners of a district may sell, at public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided. However, no such notice of intention shall be required to sell personal property of less than two thousand five hundred dollars in value.

The notice of intention to sell shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions of the bids and reserve the right to reject any and all bids for good cause.

Sec. 5. RCW 57.08.016 and 1996 c 230 s 306 are each amended to read as follows:

(1) There shall be no private sale of real property where the appraised value exceeds the sum of two thousand five hundred dollars. Subject to the provisions of subsection (2) of this section, no real property of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred twenty days of offering the property for

sale, the board of commissioners of the district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property, state the time and place at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids for good cause.

Sec. 6. RCW 57.08.030 and 1996 c 230 s 307 are each amended to read as follows:

(1) Whenever any district shall have installed a distributing system of water mains and laterals, and as a source of supply of water shall be purchasing or intending to purchase water from any city or town, and whenever it appears to be advantageous to the water consumers in the district that such city or town shall take over the water system of the district and supply water to those water users, the commissioners of the district, when authorized as provided in subsection (2) of this section, shall have the right to convey the distributing system to that city or town if that city or town is willing to accept, maintain, and repair the same.

(2) Should the commissioners of the district decide that it would be to the advantage of the water consumers of the district to make the conveyance provided for in subsection (1) of this section, they shall cause the proposition of making that conveyance to be submitted to the voters of the district at any general election or at a special election to be called for the purpose of voting on the same. If at the election a majority of the voters voting on the proposition shall be in favor of making the conveyance, the district commissioners shall have the right to convey to the city or town the mains and laterals belonging to the district upon the city or town entering into a contract satisfactory to the commissioners to maintain and repair the same.

(3) Whenever a city or town located wholly or in part within a district shall enter into a contract with the commissioners of a district providing that the city or town shall take over all of the operation of the water supply facilities of the district located within its boundaries, the area of the district located within the city or town shall upon the execution of the contract cease to be served by the district for water service purposes. However, the affected land within that city or town shall remain liable for the payment of all assessments, any lien upon the property at the time of the execution of the agreement, and for any lien of all general obligation bonds due at the date of the contract, and the city or town shall remain liable for its fair prorated share of the debt of the area for any revenue bonds, outstanding as of the date of contract.

Sec. 7. RCW 57.08.044 and 1996 c 230 s 309 are each amended to read as follows:

A district may enter into contracts with any county, city, town, or any other municipal or quasi-municipal corporation, or with any private person or

corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the district, and necessary or desirable to carry out the purposes of the district. A district may provide water, sewer, drainage, or street lighting services to property owners in areas within or without the limits of the district, except that if the area to be served is located within another existing district duly authorized to exercise district powers in that area, then water, sewer, drainage, or street lighting service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of that other district.

Sec. 8. RCW 57.08.047 and 1996 c 230 s 310 are each amended to read as follows:

The provision of water ((or)), sewer, or drainage service beyond the boundaries of a district may be subject to potential review by a boundary review board under chapter 36.93 RCW.

Sec. 9. RCW 57.08.050 and 1998 c 278 s 8 are each amended to read as follows:

(1) All 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 in excess of five thousand dollars and less than fifty thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155. The board of 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 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 commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

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 the bidder's 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 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 the bidder's own plans and specifications. The board of 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 the contract is 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 doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of 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 the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(3) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Sec. 10. RCW 57.08.065 and 1997 c 447 s 17 are each amended to read as follows:

(1) A district shall have power to establish, maintain, and operate a mutual water, sewerage, drainage, and street lighting system, a mutual system of any two or three of the systems, or separate systems.

(2) Where any two or more districts include the same territory as of July 1, 1997, none of the overlapping districts may provide any service that was made available by any of the other districts prior to July 1, 1997, within the overlapping territory without the consent by resolution of the board of commissioners of the other district or districts.

(3) A district that was a water district prior to July 1, 1997, that did not operate a system of sewerage or drainage prior to July 1, 1997, may not proceed to exercise the powers to establish, maintain, construct, and operate any system of sewerage or drainage without first obtaining written approval and certification of necessity from the department of ecology and department of health. Any comprehensive plan for a system of sewers or drainages or addition thereto or betterment thereof, proposed by a district that was a water district prior to July 1, 1997, shall be

approved by the same county and state officials as were required to approve such plans adopted by a sewer district immediately prior to July 1, 1997, and as subsequently may be required.

Sec. 11. RCW 57.08.081 and 1998 c 285 s 2 and 1998 c 106 s 9 are each reenacted to read as follows:

(1) The commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer or drainage service and facilities.

(2) In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. Prior to furnishing services, a district may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(3) The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the auditor of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes.

(4) The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

(5) In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of thirty days.

(6) A district may determine how to apply partial payments on past due accounts.

(7) A district may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the district in writing that a property served by the district is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the district shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the district notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a district fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (7), the district shall have no lien against the premises for the tenant's delinquent and unpaid charges.

Sec. 12. RCW 57.08.085 and 1996 c 230 s 315 are each amended to read as follows:

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including state of Washington property, shall be subject to rates and charges for ~~((storm water control))~~ drainage facilities to the same extent as private persons and private property are subject to such rates and charges that are imposed by districts pursuant to RCW 57.08.005 or 57.08.081. In setting those rates and charges, consideration may be given to in-kind services, such as stream improvements or donation of property.

Sec. 13. RCW 57.08.110 and 1996 c 230 s 318 are each amended to read as follows:

To improve the organization and operation of districts, the commissioners of two or more such districts may form an association thereof, for the purpose of

securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of water supply ~~((and)),~~ sewage treatment and disposal, and drainage collection, treatment, and disposal in their respective districts. The commissioners of districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. District commissioners and employees are authorized to attend meetings of the association. The expenses of an association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association. However, the aggregate contributions made to an association by a district in any calendar year shall not exceed the amount that would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. ~~((The financial records of such an association shall be subject to audit by the state auditor.))~~

Sec. 14. RCW 57.08.180 and 1996 c 230 s 322 are each amended to read as follows:

It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any connection with any sewer, drainage, or water system of any district, or with any sewer, drainage, or water system which is connected directly or indirectly with any sewer, drainage, or water system of any district without having permission from the district.

Sec. 15. RCW 57.16.060 and 1996 c 230 s 602 are each amended to read as follows:

Local improvement districts or utility local improvement districts to carry out the whole or any portion of the general comprehensive plan of improvements or plan providing for additions and betterments to an original general comprehensive plan previously adopted may be initiated either by resolution of the board of commissioners or by petition signed by the owners according to the records of the office of the applicable county auditor of at least fifty-one percent of the area of the land within the limits of the improvement district to be created.

In case the board of commissioners desires to initiate the formation of an improvement district by resolution, it first shall pass a resolution declaring its intention to order the improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed improvement district, and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed improvement district, and fixing a date, time, and place for a public hearing on the formation of the proposed improvement district.

In case any such improvement district is initiated by petition, the petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners according to the

records of the applicable county auditor of at least fifty-one percent of the area of land within the limits of the improvement district to be created. Upon the filing of such petition the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from the petition after it has been filed with the board of commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of the improvement, designating the number of the proposed improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed improvement district, and fixing a date, time, and place for a public hearing on the formation of the proposed improvement district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed improvement district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county (~~auditor~~) treasurer of the county in which the real property is located at the address shown thereon. Whenever such notices are mailed, the commissioners shall maintain a list of the reputed property owners, which list shall be kept on file at a location within the district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices also shall set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, and the date, time, and place of the hearing before the board of commissioners. In the case of improvements initiated by resolution, the notice also shall: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed improvement district file written protests with the secretary of the board, the power of the commissioners to proceed with the creation of the proposed improvement district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the district where the names of the property owners within the proposed improvement district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such

improvement to be borne by the particular lot, tract, parcel of land, or other property.

Sec. 16. RCW 57.16.110 and 1998 c 106 s 5 are each amended to read as follows:

Whenever any land against which there has been levied any special assessment by any district shall have been sold in part or ~~((subdivided))~~ divided, the board of commissioners of the district shall have the power to order a segregation of the assessment.

Any person desiring to have a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the district that levied the assessment. If the commissioners determine that a segregation should be made, they shall by resolution order the treasurer of the county in which the real property is located to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract and the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation. The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation.

Sec. 17. RCW 57.20.120 and 1996 c 230 s 714 are each amended to read as follows:

A district may contract indebtedness in excess of the amount named in RCW 57.20.110, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property in that district, as the term "value of the taxable property" is defined in RCW 39.36.015, and impose excess property tax levies to retire the indebtedness whenever ~~((three-fifths of the voters voting at the election in such district assent thereto, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in the district at the last preceding general election))~~ a ballot proposition authorizing the indebtedness and excess levies is approved as provided under Article VII, section 2, and Article VIII, section 6, of the state Constitution, at an election to be held in the district in the manner provided by this title and RCW 39.36.050.

Sec. 18. RCW 57.20.140 and 1996 c 230 s 717 are each amended to read as follows:

The treasurer ~~((designated under RCW 57.20.135))~~ shall create and maintain a separate fund designated as the maintenance fund or general fund of the district into which shall be paid all money received by the treasurer from the collection of

taxes other than taxes levied for the payment of general obligation bonds of the district and all revenues of the district other than assessments levied in local improvement districts or utility local improvement districts, and no money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The treasurer also shall maintain such other special funds as may be prescribed by the district, into which shall be placed such money as the board of commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of commissioners.

Sec. 19. RCW 57.24.040 and 1996 c 230 s 904 are each amended to read as follows:

(1) The annexation election shall be held on the date designated in the notice and shall be conducted in accordance with the general election laws of the state. If the original petition for annexation is signed by qualified voters, then only qualified voters at the date of election residing in the territory proposed to be annexed, shall be permitted to vote at the election.

(2) If the original petition for annexation is signed by property owners as provided for in this chapter, then no person shall be entitled to vote at that election unless at the time of the filing of the original petition he or she owned land in the district of record and in addition thereto at the date of election shall be a qualified voter of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county legislative authority, to certify the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of the auditor's office; and at any such election the county auditor may require any such property owner offering to vote to take an oath that the property owner is a qualified voter of the county before the property owner shall be allowed to vote. However, at any election held under the provisions of this chapter an officer or agent of any corporation having its principal place of business in the county and owning land at the date of filing the original petition in the district duly authorized in writing may cast a vote on behalf of such corporation. When so voting the person shall file with the county auditor such a written instrument of that person's authority.

(3) If the majority of the votes cast upon the question of such election shall be for annexation, then the territory concerned shall immediately be and become annexed to such district and the same shall then forthwith be a part of the district, the same as though originally included in that district.

Sec. 20. RCW 57.24.050 and 1996 c 230 s 905 are each amended to read as follows:

All elections held pursuant to this chapter, whether general or special, shall be conducted by the county (~~election board~~) auditor of the county in which the district is located. The expense of all such elections shall be paid for out of the funds of such district.

Sec. 21. RCW 57.28.050 and 1996 c 230 s 1007 are each amended to read as follows:

The petition for withdrawal shall be heard at the time and place specified in such notice or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory or to the proposed boundary lines thereof. Upon final hearing on the petition for withdrawal, the board of commissioners of the district shall make such changes in the proposed boundary lines as it deems to be proper, except that no changes in the boundary lines shall be made by the board of commissioners to include lands not within the boundaries of the territory as described in such petition. In establishing and defining such boundaries the board of commissioners shall exclude any property which is then being furnished with water ((or)), sewer, or drainage service by the district or which is included in any distribution or collection system the construction of which is included within any duly established local improvement district or utility local improvement district, and the territory as finally established and defined must be substantial in area and consist of adjoining or contiguous properties. The board of commissioners shall thereupon make and by resolution adopt findings of fact as to the following questions:

- (1) Would the withdrawal of such territory be of benefit to such territory?
- (2) Would such withdrawal be conducive to the general welfare of the balance of the district?

Such findings shall be entered in the records of the district, together with any recommendations the board of commissioners may by resolution adopt.

Sec. 22. RCW 57.32.023 and 1996 c 230 s 1106 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 and the return of such election shall be made within ten days after the date thereof. Upon the return))~~ consolidation shall be authorized. The consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new district and municipal corporation of the state of Washington, upon the certification of the election results. The name of the new district shall be ". . . . Water-Sewer District," ". . . . Water District," ". . . . Sewer District," or ". . . . 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-sewer, sewer, or 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, sewer, and drainage services contained in the agreement for consolidation and any future additions and betterments to the comprehensive plan of water supply, sewer, and drainage services, as its board of district commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district.

Sec. 23. RCW 57.36.040 and 1996 c 230 s 1205 are each amended to read as follows:

If at such election a majority of the voters of the merging district or districts shall vote in favor of the merger, the ~~((county canvassing board shall so declare in its canvass and the return of such election shall be made within ten days after the date thereof, and upon such return))~~ merger shall be authorized. The merger shall be effective and the merging district or districts shall cease to exist and shall become a part of the merger district, upon the certification of the election results. The commissioners of the merging district or districts shall hold office as commissioners of the new merged district until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. The election of commissioners in the merger district after the merger shall occur as provided in RCW 57.32.130 in a consolidated district after the consolidation.

Sec. 24. RCW 57.90.010 and 1996 c 230 s 1502 are each amended to read as follows:

Water-sewer, ~~((sewer, water,))~~ park and recreation, metropolitan park, county rural library, cemetery, flood control, mosquito control, diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, and any air pollution control authority, hereinafter referred to as "special districts," which are located wholly or in part within a county with a population of two hundred ten thousand or more may be disincorporated when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period.

PART II - MISCELLANEOUS CORRECTIONS

Sec. 25. RCW 27.12.470 and 1994 c 198 s 2 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.

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 water-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.

Sec. 26. RCW 32.20.070 and 1955 c 13 s 32.20.070 are each amended to read as follows:

A mutual savings bank may invest its funds in the valid warrants or bonds of any county, city, town, school district, port district, water-sewer district, or other

municipal corporation in the state of Washington issued pursuant to law and for the payment of which the faith and credit of such county, municipality, or district is pledged and taxes are leviable upon all taxable property within its limits.

A mutual savings bank may invest its funds in the water revenue, sewer revenue, or electric revenue bonds of any city or public utility district of this state for the payment of which the entire revenue of the city's or district's water system, sewer system, or electric system, less maintenance and operating costs, is irrevocably pledged.

Sec. 27. RCW 32.20.110 and 1955 c 13 s 32.20.110 are each amended to read as follows:

A mutual savings bank may invest its funds in the bonds of any port district, (~~water district~~) sanitary district, water-sewer district, tunnel district, bridge district, flood control district, park district, or highway district in the United States which has a population as shown by the last decennial federal census of not less than one hundred fifty thousand inhabitants, and has taxable real property with an assessed valuation in excess of two hundred million dollars and has power to levy taxes on the taxable real property therein for the payment of the bonds without limitation of rate or amount.

Sec. 28. RCW 35.13A.020 and 1998 c 326 s 2 are each amended to read as follows:

(1) Whenever all of the territory of a (~~water-sewer~~) district is included within the corporate boundaries of a city, the city legislative body may adopt a resolution or ordinance to assume jurisdiction over all of the district.

(2) Upon the assumption, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water, sewer, and drainage facilities, and all other facilities and equipment of the district shall become the property of the city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which the property may have been pledged. The city, in addition to its other powers, shall have the power to manage, control, maintain, and operate the property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments, or revenues of any kind or nature and to any other contractual obligations of the district.

(3) The city may by resolution or ordinance of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected the district taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of the indebtedness, according to all of the terms, conditions and covenants incident to the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of their terms, conditions, and covenants. An assumption shall not be deemed to impair the obligation of any indebtedness or other contractual

obligation. During the period until the outstanding indebtedness of the district has been discharged, the territory of the district and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of the indebtedness, including any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of the district's indebtedness, collecting the district's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from the property or owners or occupants thereof, enforcing the collection and performing all other acts necessary to ensure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assessments have been levied and service and other charges have accrued for this purpose but have not been collected by the district prior to the assumption, the same when collected shall belong and be paid to the city and be used by the city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date the city assumes the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the terms, conditions, and covenants of the indebtedness. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the assumed utility and shall not be transferred to or used for the benefit of the city's general fund.

Sec. 29. RCW 35.13A.030 and 1971 ex.s. c 95 s 3 are each amended to read as follows:

Whenever a portion of a (~~water district or sewer~~) district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050.

Sec. 30. RCW 35.13A.040 and 1971 ex.s. c 95 s 4 are each amended to read as follows:

Whenever the portion of a (~~water or sewer~~) district included within the corporate boundaries of a city is less than sixty percent of the area of the district and less than sixty percent of the assessed valuation of the real property within the district, the city may elect to proceed under the provisions of RCW 35.13A.050.

Sec. 31. RCW 35.13A.060 and 1971 ex.s. c 95 s 6 are each amended to read as follows:

Whenever more than one city, in whole or in part, is included within a (~~water district or sewer~~) district, the city which has within its boundaries sixty percent or more of the area of the assessed valuation of the district (in this section referred to as the "principal city") may, with the approval of any other city containing part of such district, assume responsibility for operation and maintenance of the district's property, facilities and equipment within such other city and make and enforce such charges for operation, maintenance and retirement of indebtedness as may be reasonable under all the circumstances.

Any other city having less than sixty percent in area or assessed valuation of such district, within its boundaries may install facilities and create local improvement districts or otherwise finance the cost of installation of such facilities and if such facilities have been installed in accordance with reasonable standards fixed by the principal city, such other city may connect such facilities to the utility system of such district operated by the principal city upon providing for payment by the owners or occupants of properties served thereby, of such charges established by the principal city as may be reasonable under the circumstances.

Sec. 32. RCW 35.13A.090 and 1971 ex.s. c 95 s 9 are each amended to read as follows:

Whenever a city acquires all of the facilities of a (~~water district or sewer~~) district, pursuant to this chapter, such a city shall offer to employ every full time employee of the district who is engaged in the operation of such a district's facilities on the date on which such city acquires the district facilities. When a city acquires any portion of the facilities of such a district, such a city shall offer to employ full time employees of the district as of the date of the acquisition of the facilities of the district who are not longer needed by the district.

Whenever a city employs a person who was employed immediately prior thereto by the district, arrangements shall be made:

(1) (~~For the retention of service credits under the pension plan of the district pursuant to RCW 41.04.070 through 41.04.110.~~

~~(2))~~ For the retention of all sick leave standing to the employee's credit in the plan of such district.

~~(3))~~ (2) For a vacation with pay during the first year of employment equivalent to that to which he would have been entitled if he had remained in the employment of the district.

Sec. 33. RCW 35.58.210 and 1974 ex.s. c 70 s 7 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water pollution abatement advisory committee to be formed by notifying the legislative body of each component city and county which operates a sewer system

to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district (~~(and water district)~~) which operates a sewer system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a commissioner of such a water-sewer (~~(or water)~~) district. The metropolitan water pollution abatement advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the water pollution (~~(abatement)~~) abatement function.

Sec. 34. RCW 35.58.220 and 1965 c 7 s 35.58.220 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a comprehensive plan for the development of sources of water supply, trunk supply mains and water treatment and storage facilities for the metropolitan area.

(2) To acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for water supply within or without the metropolitan area, including buildings, structures, water sheds, wells, springs, dams, settling basins, intakes, treatment plants, trunk supply mains and pumping stations, together with all lands, property, equipment and accessories necessary to enable the metropolitan municipal corporation to obtain and develop sources of water supply, treat and store water and deliver water through trunk supply mains. Water supply facilities which are owned by a city or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the city or special district owning such facilities. Cities and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or special district.

(3) To fix rates and charges for water supplied by the metropolitan municipal corporation.

(4) To acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local distribution of water in portions of the metropolitan area not contained within any city, or water-sewer district that operates a water system, and, with the consent of the legislative body of any city or the water-sewer district, to exercise such powers within such city or water-sewer district and for such purpose to have

all the powers conferred by law upon such city or water-sewer district with respect to such local distribution facilities. All costs of such local distribution facilities shall be paid for by the area served thereby.

Sec. 35. RCW 35.58.230 and 1993 c 240 s 5 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water advisory committee to be formed by notifying the legislative body of each component city which operates a water system to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district that operates a water system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a water-sewer district commissioner. The metropolitan water advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council with respect to matters relating to the performance of the water supply function.

The requirement to create a metropolitan water advisory committee shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW.

Sec. 36. RCW 35.58.410 and 1998 c 321 s 26 are each amended to read as follows:

(1) On or before the third Monday in June of each year, each metropolitan municipal corporation shall adopt a budget for the following calendar year. Such budget shall include a separate section for each authorized metropolitan function. Expenditures shall be segregated as to operation and maintenance expenses and capital and betterment outlays. Administrative and other expense general to the corporation shall be allocated between the authorized metropolitan functions. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The metropolitan council shall not be required to confine capital or betterment expenditures made from bond proceeds or emergency expenditures to items provided in the budget. The affirmative vote of three-fourths of all members of the metropolitan council shall be required to authorize emergency expenditures.

(2) Subsection (1) of this section shall not apply to a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW. This subsection (2) shall apply only to each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW.

Each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall, on or before the third Monday in June of each year, prepare an estimate of all revenues to be collected during the following calendar year, including any surplus funds remaining unexpended from the preceding year for each authorized metropolitan function.

By June 30 of each year, the county shall adopt the rate for sewage disposal that will be charged to component cities and water-sewer districts during the following budget year.

As long as any general obligation indebtedness remains outstanding that was issued by the metropolitan municipal corporation prior to the assumption by the county, the county shall continue to impose the taxes authorized by RCW 82.14.045 and 35.58.273(4) at the maximum rates and on all of the taxable events authorized by law. If, despite the continued imposition of those taxes, the estimate of revenues made on or before the third Monday in June shows that estimated revenues will be insufficient to make all debt service payments falling due in the following calendar year on all general obligation indebtedness issued by the metropolitan municipal corporation prior to the assumption by the county of the rights, powers, functions, and obligations of the metropolitan municipal corporation, the remaining amount required to make the debt service payments shall be designated as "supplemental income" and shall be obtained from component cities and component counties as provided under RCW 35.58.420.

The county shall prepare and adopt a budget each year in accordance with applicable general law or county charter. If supplemental income has been designated under this subsection, the supplemental income shall be reflected in the budget that is adopted. If during the budget year the actual tax revenues from the taxes imposed under the authority of RCW 82.14.045 and 35.58.273(4) exceed the estimates upon which the supplemental income was based, the difference shall be refunded to the component cities and component counties in proportion to their payments promptly after the end of the budget year. A county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall not be required to confine capital or betterment expenditures for authorized metropolitan functions from bond proceeds or emergency expenditures to items provided in the budget.

Sec. 37. RCW 35.67.300 and 1965 c 7 s 35.67.300 are each amended to read as follows:

Any city, town, or organized and established water-sewer district owning or operating its own sewer system, whenever topographic conditions shall make it feasible and whenever such existing sewer system shall be adequate therefor in view of the sewerage and drainage requirements of the property in such city, town, or water-sewer district, served or to be served by such system, may contract with any other city, town, or organized and established water-sewer district for the discharge into its sewer system of sewage from all or any part or parts of such

other city, town, or water-sewer district upon such terms and conditions and for such periods of time as may be deemed reasonable.

Any city, town, or organized and established water-sewer district may contract with any other city, town, or organized and established water-sewer district for the construction and/or operation of any sewer or sewage disposal facilities for the joint use and benefit of the contracting parties upon such terms and conditions and for such period of time as the governing bodies of the contracting parties may determine. Any such contract may provide that the responsibility for the management of the construction and/or maintenance and operation of any sewer disposal facilities or part thereof covered by such contract shall be vested solely in one of the contracting parties, with the other party or parties thereto paying to the managing party such portion of the expenses thereof as shall be agreed upon.

Sec. 38. RCW 35.91.020 and 1981 c 313 s 11 are each amended to read as follows:

The governing body of any city, town, county, water-sewer district, (~~water district~~;) or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law. To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to such reasonable requirements as to the manner of occupancy of such streets as the county may by resolution provide. The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities. (~~The power of the governing body of such municipality to so contract also applies to water or sewer facilities in process of construction on June 10, 1959, or which have not been finally approved or accepted for full maintenance and operation by such municipality upon June 10, 1959;~~)

Sec. 39. RCW 35.92.012 and 1965 c 7 s 35.92.012 are each amended to read as follows:

A city or town, whose boundaries are identical with those of a water-sewer district, or within which a water-sewer district is entirely located, which is free from all debts and liabilities except contractual obligations between the district and the town, may accept the property and assets of the (~~water~~) district and operate such property and assets as a municipal waterworks, if the district and the city or town each participate in a summary dissolution proceedings for the district as provided in RCW 57.04.110.

Sec. 40. RCW 35.92.170 and 1965 c 7 s 35.92.170 are each amended to read as follows:

When a city or town owns or operates a municipal waterworks system and desires to extend such utility beyond its corporate limits it may acquire, construct and maintain any addition to or extension of the system, and dispose of and distribute water to any other municipality, water-sewer district, community, or person desiring to purchase it.

Sec. 41. RCW 35.97.010 and 1987 c 522 s 4 are each amended to read as follows:

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

(1) "Biomass energy system" means a system that provides for the production or collection of organic materials such as wood and agricultural residues and municipal solid waste that are primarily organic materials and the conversion or use of that material for the production of heat or substitute fuels through several processes including, but not limited to, burning, pyrolysis, or anaerobic digestion.

(2) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source.

(3) "Cogeneration facility" means any machinery, equipment, structure, process, or property or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(4) "Geothermal heat" means the natural thermal energy of the earth.

(5) "Waste heat" means the thermal energy which otherwise would be released to the environment from an industrial process, electric generation, or other process.

(6) "Heat" means thermal energy.

(7) "Heat source" includes but is not limited to (a) any integral part of a heat production or heat rejection system of an industrial facility, cogeneration facility, or electric power generation facility, (b) geothermal well or spring, (c) biomass energy system, (d) solar collection facility, and (e) hydrothermal resource or heat extraction process.

(8) "Municipality" means a county, city, town, irrigation district which distributes electricity, water-sewer district, (~~water-district~~), port district, or metropolitan municipal corporation.

(9) "Heating facilities or heating systems" means all real and personal property, or interests therein, necessary or useful for: (a) The acquisition, production, or extraction of heat; (h) the storage of heat; (c) the distribution of heat from its source to the place of utilization; (d) the extraction of heat at the place of utilization from the medium by which the heat is distributed; (e) the distribution of heat at the place of utilization; and (f) the conservation of heat.

(10) "Hydrothermal resource" means the thermal energy available in wastewater, sewage effluent, wells, or other water sources, natural or manmade.

Sec. 42. RCW 35.97.050 and 1996 c 230 s 1603 are each amended to read as follows:

If the legislative authority of a municipality deems it advisable that the municipality purchase, acquire, or construct a heating system, or make any additions or extensions to a heating system, the legislative authority shall so provide by an ordinance or a resolution specifying and adopting the system or plan proposed, declaring the estimated cost thereof, as near as may be, and specifying the method of financing and source of funds. Any construction, alteration, or improvement of a heating system by any (~~county, city, town, irrigation district, water-sewer district, or port district~~) municipality shall be in compliance with the appropriate competitive bidding requirements in Titles 35, 36, 53, 57, or 87 RCW.

Sec. 43. RCW 36.16.138 and 1975 c 16 s 1 are each amended to read as follows:

Any board of commissioners, council, or board of directors or other governing board of any county, city, town, school district, port district, public utility district, water-sewer district, (~~water district~~), irrigation district, or other municipal corporation or political subdivision is authorized to purchase insurance to protect and hold personally harmless any of its commissioners, council members, directors, or other governing board members, and any of its other officers, employees, and agents from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, purported performance, or failure of performance, in good faith of duties for, or employment with, such institutions and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance for any of the foregoing individuals and the policy limits shall be discretionary with the municipal corporation or political subdivision, and such insurance shall not be considered to be compensation for these individuals.

The provisions of this section are cumulative and in addition to any other provision of law authorizing any municipal corporation or political subdivision to purchase liability insurance.

Sec. 44. RCW 36.93.020 and 1979 ex.s. c 30 s 5 are each amended to read as follows:

As used herein:

(1) "Governmental unit" means any incorporated city or town, metropolitan municipal corporation, or any special purpose district as defined in this section.

(2) "Special purpose district" means any water-sewer district, (~~(water-district,)~~) fire protection district, drainage improvement district, drainage and diking improvement district, flood control zone district, irrigation district, metropolitan park district, drainage district, or public utility district engaged in water distribution.

(3) "Board" means a boundary review board created by or pursuant to this chapter.

Sec. 45. RCW 36.93.093 and 1971 ex.s. c 127 s 2 are each amended to read as follows:

Whenever a (~~(sewer-or)~~) water-sewer district files with the board a notice of intention as required by RCW 36.93.090, the board shall send a copy of such notice of intention to the legislative authority of the county wherein such action is proposed to be taken and one copy to the state department of ecology.

Sec. 46. RCW 36.93.105 and 1989 c 84 s 4 are each amended to read as follows:

The following actions shall not be subject to potential review by a boundary review board:

(1) Annexations of territory to a water (~~(or)~~)-sewer district pursuant to RCW 36.94.410 through 36.94.440;

(2) Revisions of city or town boundaries pursuant to RCW 35.21.790 or 35A.21.210;

(3) Adjustments to city or town boundaries pursuant to RCW 35.13.340; and

(4) Adjustments to city and town boundaries pursuant to RCW 35.13.300 through 35.13.330.

Sec. 47. RCW 36.93.185 and 1989 c 308 s 13 are each amended to read as follows:

The proposal by a (~~(water-district-or)~~) water-sewer district to annex territory that is not adjacent to the district shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the territory is not adjacent to the (~~(water-district-or)~~) water-sewer district. The proposed consolidation or merger of two or more (~~(water-districts-or-two-or-more)~~) water-sewer districts that are not adjacent to each other shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the districts are not adjacent.

Sec. 48. RCW 36.94.220 and 1981 c 313 s 3 are each amended to read as follows:

(1) A county shall have the power to establish utility local improvement districts and local improvement districts within the area of a sewerage and/or water general plan and to levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially

benefited by any local improvement on the basis of the special benefits to pay in whole or in part the damages or costs of any improvements ordered in such county.

(2) Utility local improvement districts and local improvement districts may include territory within a city or town only with the written consent of the city or town, but if the local district is formed before such area is included within the city or town, no such consent shall be necessary. Utility local improvement districts and local improvement districts used to provide sewerage disposal systems may include territory within a (~~sewer district or within a~~) water-sewer district providing sewerage disposal systems only with the written consent of (~~the sewer district or~~) such a water-sewer district, but if the local district is formed before such area is included within (~~the sewer district or~~) such a water-sewer district, no consent is necessary. Utility local improvement districts and local improvement districts used to provide water systems may include territory within (~~a water district or within~~) a water-sewer district providing water systems only with the written consent of (~~the water district or~~) such a water-sewer district, but if the local district is formed before such area is included within (~~the water district or~~) such a water-sewer district, no consent is necessary.

(3) The levying, collection, and enforcement of all public assessments hereby authorized shall be in the manner now and hereafter provided by law for the levying, collection, and enforcement of local improvement assessments by cities and towns, insofar as the same shall not be inconsistent with the provisions of this chapter. In addition, the county shall file the preliminary assessment roll at the time and in the manner prescribed in RCW 35.50.005. The duties devolving upon the city or town treasurer under such laws are imposed upon the county treasurer for the purposes of this chapter. The mode of assessment shall be in the manner to be determined by the county legislative authority by ordinance or resolution. As an alternative to equal annual assessment installments of principal provided for cities and towns, a county legislative authority may provide for the payment of such assessments in equal annual installments of principal and interest. Assessments in any local district may be made on the basis of special benefits up to but not in excess of the total cost of any sewerage and/or water improvement made with respect to that local district and the share of any general sewerage and/or water facilities allocable to that district. In utility local improvement districts, assessments shall be deposited into the revenue bond fund or general obligation bond fund established for the payment of bonds issued to pay such costs which bond payments are secured in part by the pledge of assessments, except pending the issuance and sale of such bonds, assessments may be deposited in a fund for the payment of such costs. In local improvement districts, assessments shall be deposited into a fund for the payment of such costs and local improvement bonds issued to finance the same or into the local improvement guaranty fund as provided by applicable statute.

Sec. 49. RCW 36.94.430 and 1984 c 147 s 3 are each amended to read as follows:

The provisions of RCW 36.94.410 and 36.94.420 provide an alternative method of accomplishing the transfer permitted by those sections and do not impose additional conditions upon the exercise of powers vested in water ~~((and))~~ sewer districts and counties.

Sec. 50. RCW 36.96.010 and 1979 ex.s. c 5 s 1 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Special purpose district" means every municipal and quasi-municipal corporation other than counties, cities, and towns. Such special purpose districts shall include, but are not limited to, water-sewer districts, fire protection districts, port districts, public utility districts, county park and recreation service areas, flood control zone districts, diking districts, drainage improvement districts, and solid waste collection districts, but shall not include industrial development districts created by port districts, and shall not include local improvement districts, utility local improvement districts, and road improvement districts;

(2) "Governing authority" means the commission, council, or other body which directs the affairs of a special purpose district;

(3) "Inactive" means that a special purpose district, other than a public utility district, is characterized by either of the following criteria:

(a) Has not carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period; or

(b) No election has been held for the purpose of electing a member of the governing body within the preceding consecutive seven-year period or, in those instances where members of the governing body are appointed and not elected, where no member of the governing body has been appointed within the preceding seven-year period.

A public utility district is inactive when it is characterized by both criteria (a) and (b) of this subsection.

Sec. 51. RCW 36.94.410 and 1984 c 147 s 1 are each amended to read as follows:

A system of sewerage, system of water or combined water and sewerage systems operated by a county under the authority of this chapter may be transferred from that county to a water ~~((or))~~ sewer district in the same manner as is provided for the transfer of those functions from a water ~~((or))~~ sewer district to a county in RCW 36.94.310 through 36.94.340.

Sec. 52. RCW 36.94.420 and 1996 c 230 s 1609 are each amended to read as follows:

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers

served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage, a system of water, or combined water and sewer systems from a county to a water-sewer district (~~((governed by Title 57 RCW))~~), the water-sewer district shall (~~((have all the powers of a water-sewer district provided by chapter 57.36 RCW, as if a water-sewer district had been merged into a water-sewer district))~~) operate the system or systems under the provisions of Title 57 RCW.

Sec. 53. RCW 39.69.010 and 1987 c 19 s 1 are each amended to read as follows:

As used in this chapter, "municipal corporation" includes counties, cities, towns, port districts, (~~((sewer districts,))~~) water-sewer districts, school districts, metropolitan park districts, or such other units of local government which are authorized to issue obligations.

Sec. 54. RCW 39.50.010 and 1998 c 106 s 8 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) "Governing body" means the legislative authority of a municipal corporation by whatever name designated;

(2) "Local improvement district" includes local improvement districts, utility local improvement districts, road improvement districts, and other improvement districts that a municipal corporation is authorized by law to establish;

(3) "Municipal corporation" means any city, town, county, (~~((water district,))~~) water-sewer district, school district, port district, public utility district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, irrigation district, fire protection district or any other municipal or quasi municipal corporation described as such by statute, or regional transit authority, except joint operating agencies under chapter 43.52 RCW;

(4) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the municipal corporation exercising any power under this chapter takes formal action and adopts legislative provisions and matters of some permanency; and

(5) "Short-term obligations" are warrants, notes, or other evidences of indebtedness, except bonds.

Sec. 55. RCW 39.80.020 and 1981 c 61 s 2 are each amended to read as follows:

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

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water-sewer districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, (~~sewer districts,~~) transportation districts, and metropolitan municipal corporations organized under chapter 35.58 RCW.

(4) "Agency" means both state and local agencies and special districts as defined in subsection ~~(1)~~ (1), (2), and (3) of this section.

(5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.

(6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.

(8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services.

Sec. 56. RCW 43.20.240 and 1990 c 132 s 3 are each amended to read as follows:

(1) The department shall have primary responsibility among state agencies to receive complaints from persons aggrieved by the failure of a public water system. If the remedy to the complaint is not within the jurisdiction of the department, the department shall refer the complaint to the state or local agency that has the appropriate jurisdiction. The department shall take such steps as are necessary to inform other state agencies of their primary responsibility for such complaints and the implementing procedures.

(2) Each county shall designate a contact person to the department for the purpose of receiving and following up on complaint referrals that are within county jurisdiction. In the absence of any such designation, the county health officer shall be responsible for performing this function.

(3) The department and each county shall establish procedures for providing a reasonable response to complaints received from persons aggrieved by the failure of a public water system.

(4) The department and each county shall use all reasonable efforts to assist customers of public water systems in obtaining a dependable supply of water at all times. The availability of resources and the public health significance of the

complaint shall be considered when determining what constitutes a reasonable effort.

(5) The department shall, in consultation with local governments, water utilities, water-sewer districts, public utility districts, and other interested parties, develop a booklet or other single document that will provide to members of the public the following information:

(a) A summary of state law regarding the obligations of public water systems in providing drinking water supplies to their customers;

(b) A summary of the activities, including planning, rate setting, and compliance, that are to be performed by both local and state agencies;

(c) The rights of customers of public water systems, including identification of agencies or offices to which they may address the most common complaints regarding the failures or inadequacies of public water systems.

This booklet or document shall be available to members of the public no later than January 1, 1991.

Sec. 57. RCW 43.70.195 and 1994 c 292 s 3 are each amended to read as follows:

(1) In any action brought by the secretary of health or by a local health officer pursuant to chapter 7.60 RCW to place a public water system in receivership, the petition shall include the names of one or more suitable candidates for receiver who have consented to assume operation of the water system. The department shall maintain a list of interested and qualified individuals, municipal entities, special purpose districts, and investor-owned water companies with experience in the provision of water service and a history of satisfactory operation of a water system. If there is no other person willing and able to be named as receiver, the court shall appoint the county in which the water system is located as receiver. The county may designate a county agency to operate the system, or it may contract with another individual or public water system to provide management for the system. If the county is appointed as receiver, the secretary of health and the county health officer shall provide regulatory oversight for the agency or other person responsible for managing the water system.

(2) In any petition for receivership under subsection (1) of this section, the department shall recommend that the court grant to the receiver full authority to act in the best interests of the customers served by the public water system. The receiver shall assess the capability, in conjunction with the department and local government, for the system to operate in compliance with health and safety standards, and shall report to the court and the petitioning agency its recommendations for the system's future operation, including the formation of a water-sewer district or other public entity, or ownership by another existing water system capable of providing service.

(3) If a petition for receivership and verifying affidavit executed by an appropriate departmental official allege an immediate and serious danger to residents constituting an emergency, the court shall set the matter for hearing

within three days and may appoint a temporary receiver ex parte upon the strength of such petition and affidavit pending a full evidentiary hearing, which shall be held within fourteen days after receipt of the petition.

(4) A bond, if any is imposed upon a receiver, shall be minimal and shall reasonably relate to the level of operating revenue generated by the system. Any receiver appointed pursuant to this section shall not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the court's orders.

(5) The court shall authorize the receiver to impose reasonable assessments on a water system's customers to recover expenditures for improvements necessary for the public health and safety.

(6) No later than twelve months after appointment of a receiver, the petitioning agency, in conjunction with the county in which the system is located, and the appropriate state and local health agencies, shall develop and present to the court a plan for the disposition of the system. The report shall include the recommendations of the receiver made pursuant to subsection (2) of this section. The report shall include all reasonable and feasible alternatives. After receiving the report, the court shall provide notice to interested parties and conduct such hearings as are necessary. The court shall then order the parties to implement one of the alternatives, or any combination thereof, for the disposition of the system. Such order shall include a date, or proposed date, for the termination of the receivership. Nothing in this section authorizes a court to require a city, town, public utility district, water-sewer district, or irrigation district to accept a system that has been in receivership unless the city, town, public utility district, water-sewer district, or irrigation district agrees to the terms and conditions outlined in the plan adopted by the court.

(7) The court shall not terminate the receivership, and order the return of the system to the owners, unless the department of health approves of such an action. The court may impose reasonable conditions upon the return of the system to the owner, including the posting of a bond or other security, routine performance and financial audits, employment of qualified operators and other staff or contracted services, compliance with financial viability requirements, or other measures sufficient to ensure the ongoing proper operation of the system.

(8) If, as part of the ultimate disposition of the system, an eminent domain action is commenced by a public entity to acquire the system, the court shall oversee any appraisal of the system conducted under Title 7 RCW to assure that the appraised value properly reflects any reduced value because of the necessity to make improvements to the system. The court shall have the authority to approve the appraisal, and to modify it based on any information provided at an evidentiary hearing. The court's determination of the proper value of the system, based on the appraisal, shall be final, and only appealable if not supported by substantial evidence. If the appraised value is appealed, the court may order that the system's ownership be transferred upon payment of the approved appraised value.

Sec. 58. RCW 43.155.030 and 1985 c 446 s 9 are each amended to read as follows:

(1) The public works board is hereby created.

(2) The board shall be composed of thirteen members appointed by the governor for terms of four years, except that five members initially shall be appointed for terms of two years. The board shall include: (a) Three members, two of whom shall be elected officials and one shall be a public works manager, appointed from a list of at least six persons nominated by the association of Washington cities or its successor; (b) three members, two of whom shall be elected officials and one shall be a public works manager, appointed from a list of at least six persons nominated by the Washington state association of counties or its successor; (c) three members appointed from a list of at least six persons nominated jointly by the (~~Washington state association of water districts, the~~) Washington public utility districts association(;) and (~~the Washington~~) a state association of water-sewer districts, or their successors; and (d) four members appointed from the general public. In appointing the four general public members, the governor shall endeavor to balance the geographical composition of the board and to include members with special expertise in relevant fields such as public finance, architecture and civil engineering, and public works construction. The governor shall appoint one of the general public members of the board as chair. The term of the chair shall coincide with the term of the governor.

(3) Staff support to the board shall be provided by the department.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(5) If a vacancy on the board occurs by death, resignation, or otherwise, the governor shall fill the vacant position for the unexpired term. Each vacancy in a position appointed from lists provided by the associations under subsection (2) of this section shall be filled from a list of at least three persons nominated by the relevant association or associations. Any members of the board, appointive or otherwise, may be removed by the governor for cause in accordance with RCW 43.06.070 and 43.06.080.

Sec. 59. RCW 44.04.170 and 1970 ex.s. c 69 s 2 are each amended to read as follows:

It shall be the duty of each association of municipal corporations or municipal officers, which is recognized by law and utilized as an official agency for the coordination of the policies and/or administrative programs of municipal corporations, to submit biennially, or oftener as necessary, to the governor and to the legislature the joint recommendations of such participating municipalities regarding changes which would affect the efficiency of such municipal corporations. Such associations shall include but shall not be limited to the Washington state association of fire commissioners, (~~the Washington~~) a state association of water/wastewater districts, (~~the Washington state association of sewer districts,;~~) and the Washington state school directors' association.

Sec. 60. RCW 48.62.021 and 1991 sp.s. c 30 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) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, (~~water districts,~~) water-sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi-municipal corporations.

(2) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(3) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(4) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(5) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(6) "State risk manager" means the state risk manager of the division of risk management within the department of general administration.

Sec. 61. RCW 52.08.011 and 1984 c 230 s 54 are each amended to read as follows:

Territory within a fire protection district may be withdrawn from the district in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW.

Sec. 62. RCW 53.48.001 and 1989 c 84 s 46 are each amended to read as follows:

The dissolution of a metropolitan park district, fire protection district, (~~sewer district,~~) water-sewer district, or flood control zone district under chapter 53.48 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW.

Sec. 63. RCW 53.48.010 and 1986 c 278 s 17 are each amended to read as follows:

The following words and terms shall, whenever used in this chapter, have the meaning set forth in this section:

(1) The term "district" as used herein, shall include all municipal and quasi-municipal corporations having a governing body, other than cities, towns, counties, and townships, such as port districts, school districts, water-sewer districts, fire protection districts, and all other special districts of similar organization, but shall not include local improvement districts, diking, drainage and irrigation districts, special districts as defined in RCW 85.38.010, nor public utility districts.

(2) The words "board of commissioners," as used herein, shall mean the governing authority of any district as defined in subdivision (1) of this section.

Sec. 64. RCW 54.04.030 and 1931 c 1 s 12 are each amended to read as follows:

~~(This act)~~ Chapter 1, Laws of 1931, shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public utilities by irrigation or water-sewer districts or other municipal corporations, but shall be supplemental thereto and concurrent therewith. No public utility district created hereunder shall include therein any municipal corporation, or any part thereof, where such municipal corporation already owns or operates all the utilities herein authorized: **PROVIDED**, that in case it does not own or operate all such utilities it may be included within such public utility district for the purpose of establishing or operating therein such utilities as it does not own or operate: **PROVIDED, FURTHER**, That no property situated within any irrigation or water-sewer districts or other municipal corporations shall ever be taxed or assessed to pay for any utility, or part thereof, of like character to any utility, owned or operated by such irrigation or water districts or other municipal corporations.

Sec. 65. RCW 70.44.400 and 1984 c 100 s 1 are each amended to read as follows:

Territory within a public hospital district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. For purposes of conforming with such procedure, the public hospital district shall be deemed to be the water-sewer district and the public hospital board of commissioners shall be deemed to be the water-sewer district board of commissioners.

Sec. 66. RCW 70.95B.020 and 1995 c 269 s 2901 are each amended to read as follows:

As used in this chapter unless context requires another meaning:

- (1) "Director" means the director of the department of ecology.
- (2) "Department" means the department of ecology.
- (3) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(4) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(5) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(6) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(7) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(8) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(9) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a water-sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(10) "Wastewater certification program coordinator" means an employee of the department who administers the wastewater treatment plant operators' certification program.

Sec. 67. RCW 70.119.020 and 1995 c 269 s 2904 are each amended to read as follows:

As used in this chapter unless context requires another meaning:

(1) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water-sewer district, municipality, public or private corporation, company, institution, person, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

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

(4) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(5) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(6) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

(7) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(8) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(9) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(10) "Secretary" means the secretary of the department of health.

(11) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(12) "Surface water" means all water open to the atmosphere and subject to surface runoff.

Sec. 68. RCW 79.44.003 and 1989 c 243 s 13 are each amended to read as follows:

As used in this chapter "assessing district" means:

(1) Incorporated cities and towns;

(2) Diking districts;

- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts;
- (6) Water-sewer districts;
- (7) ~~((Sewer districts;~~

—~~(8)) Counties; and~~

~~((9))~~ (8) Any municipal corporation or public agency having power to levy local improvement or other assessments, rates, or charges which by statute are expressly made applicable to lands of the state.

Sec. 69. RCW 84.04.120 and 1961 c 15 s 84.04.120 are each amended to read as follows:

"Taxing district" shall be held and construed to mean and include the state and any county, city, town, ~~((township;))~~ port district, school district, road district, metropolitan park district, water-sewer district or other municipal corporation, now or hereafter existing, having the power or authorized by law to impose burdens upon property within the district in proportion to the value thereof, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed, for such purposes, upon property in proportion to the benefits accruing thereto.

Sec. 70. RCW 84.33.100 and 1992 c 52 s 6 are each amended to read as follows:

As used in RCW 84.33.110 through 84.33.140 and 84.33.210 through 84.33.270:

(1) "Forest land" is synonymous with timberland and means all land in any contiguous ownership of twenty or more acres which is primarily devoted to and used for growing and harvesting timber and means the land only.

(2) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee.

(3) "Local government" shall mean any city, town, county, ~~((sewer district;))~~ water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary or storm sewerage systems, domestic water supply or distribution systems, or road construction or improvement purposes.

(4) "Local improvement district" shall mean any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(5) The term "average rate of inflation" shall mean the annual rate of inflation as determined by the department of revenue averaged over the period of time as provided in RCW 84.33.220 (1) and (2). Such determination shall be published not later than January 1 of each year for use in that assessment year.

(6) "Special benefit assessments" shall mean special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

Sec. 71. RCW 84.34.310 and 1992 c 52 s 15 are each amended to read as follows:

As used in RCW 84.34.300 through 84.34.380, unless a different meaning is required, the words defined in this section shall have the meanings indicated.

(1) "Farm and agricultural land" shall mean the same as defined in RCW 84.34.020(2).

(2) "Timber land" shall mean the same as defined in RCW 84.34.020(3).

(3) "Local government" shall mean any city, town, county, (~~sewer district;~~) water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction or improvement purposes.

(4) "Local improvement district" shall mean any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(5) "Owner" shall mean the same as defined in RCW 84.34.020(5) or the applicable statutes relating to special benefit assessments.

(6) The term "average rate of inflation" shall mean the annual rate of inflation as determined by the department of revenue averaged over the period of time as provided in RCW 84.34.330 (1) and (2). Such determination shall be published not later than January 1 of each year for use in that assessment year.

(7) "Special benefit assessments" shall mean special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

Sec. 72. RCW 84.64.080 and 1991 c 245 s 27 are each amended to read as follows:

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial

justice to the contestants therein; but in all other cases the court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, penalties, and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of

conveyed) and that the has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I, county treasurer of the county 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.

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

.....

County Treasurer.

Sec. 73. RCW 84.69.010 and 1961 c 15 s 84.69.010 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

(1) "Taxing district" means any county, city, town, ((~~township~~)) port district, school district, road district, metropolitan park district, water-sewer district, or other municipal corporation now or hereafter authorized by law to impose burdens upon property within the district in proportion to the value thereof, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed, for such purposes, upon property in proportion to the benefits accruing thereto.

(2) "Tax" includes penalties and interest.

Sec. 74. RCW 87.03.015 and 1979 ex.s. c 185 s 2 are each amended to read as follows:

Any irrigation district, operating and maintaining an irrigation system, in addition to other powers conferred by law, shall have authority:

(1) To purchase and sell electric power to the inhabitants of the irrigation district for the purposes of irrigation and domestic use, to acquire, construct, and lease dams, canals, plants, transmission lines, and other power equipment and the necessary property and rights therefor and to operate, improve, repair, and maintain the same, for the generation and transmission of electrical energy for use in the operation of pumping plants and irrigation systems of the district and for sale to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; and, as a further and separate grant of authority and in furtherance of a state purpose and policy of developing hydroelectric capability in connection with irrigation facilities, to construct, finance, acquire, own, operate, and maintain, alone or jointly with other irrigation districts, boards of control, other municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, or electrical companies subject to the jurisdiction of the utilities and transportation commission, hydroelectric facilities including but not limited to dams, canals, plants, transmission lines, other power equipment, and the necessary property and rights therefor, located within or outside the district, for the purpose of utilizing for the generation of electricity, water power made available

by and as a part of the irrigation water storage, conveyance, and distribution facilities, waste ways, and drainage water facilities which serve irrigation districts, and to sell any and all the electric energy generated at any such hydroelectric facilities or the irrigation district's share of such energy, to municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission, or to other irrigation districts, and on such terms and conditions as the board of directors shall determine, and to enter into contracts with other irrigation districts, boards of control, other municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission: **PROVIDED**, That no contract entered into by the board of directors of any irrigation district for the sale of electrical energy from such hydroelectric facility for a period longer than forty years from the date of commercial operation of such hydroelectric facility shall be binding on the district until ratified by a majority vote of the electors of the district at an election therein, called, held and canvassed for that purpose in the same manner as that provided by law for district bond elections.

(2) To construct, repair, purchase, maintain or lease a system for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(3) To construct, repair, purchase, lease, acquire, operate and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants as herein provided.

(4) To assume, as principal or guarantor, any indebtedness to the United States under the federal reclamation laws, on account of district lands.

(5) To maintain, repair, construct and reconstruct ditches, laterals, pipe lines and other water conduits used or to be used in carrying water for irrigation of lands located within the boundaries of a city or town or for the domestic use of the residents of a city or town where the owners of land within such city or town shall use such works to carry water to the boundaries of such city or town for irrigation, domestic or other purposes within such city or town, and to charge to such city or town the pro rata proportion of the cost of such maintenance, repair, construction and reconstruction work in proportion to the benefits received by the lands served and located within the boundaries of such city or town, and if such cost is not paid, then and in that event said irrigation district shall have the right to prevent further water deliveries through such works to the lands located within the boundaries of such city or town until such charges have been paid.

(6) To acquire, install and maintain as a part of the irrigation district's water system the necessary water mains and fire hydrants to make water available for fire fighting purposes; and in addition any such irrigation district shall have the authority to repair, operate and maintain such hydrants and mains.

(7) To enter into contracts with other irrigation districts, boards of control, municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission to jointly acquire, construct, own, operate, and maintain irrigation water, domestic water, drainage and sewerage works, and electrical power works to the same extent as authorized by subsection (1) of this section, or portions of such works.

(8) To acquire from a water-sewer district wholly within the irrigation district's boundaries, by a conveyance without cost, the water-sewer district's water system and to operate the same to provide water for the domestic use of the irrigation district residents. As a part of its acceptance of the conveyance the irrigation district must agree to relieve the water-sewer district of responsibility for maintenance and repair of the system. Any such water-sewer district is authorized to make such a conveyance if all indebtedness of the water-sewer district, except local improvement district bonds, has been paid and the conveyance has been approved by a majority of the water-sewer district's (~~electors~~) voters voting at a general or special election.

This section shall not be construed as in any manner abridging any other powers of an irrigation district conferred by law.

Sec. 75. RCW 87.03.720 and 1977 ex.s. c 208 s 1 are each amended to read as follows:

The board of directors of an irrigation district shall, after being notified by the legislative authority of the county or counties within which the irrigation district lies of the filing of the petition therefor, have the power to assent to the proposed merger with the irrigation district of that portion of a drainage improvement district, joint drainage improvement district, consolidated drainage improvement district, or water-sewer district within its boundaries at a hearing duly called by the board to consider the proposed merger if sufficient objections thereto have not been presented, as hereinafter provided.

Sec. 76. RCW 87.03.725 and 1977 ex.s. c 208 s 2 are each amended to read as follows:

The secretary of the board of directors shall cause a notice of the proposed merger to be posted and published in the same manner and for the same time as notice of a special election for the issue of bonds. The notice shall state that a petition has been filed with the legislative authority of the county or counties within which the irrigation districts lies by the board of supervisors of the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district or by the board of commissioners of a water-sewer district requesting that the drainage improvement district, joint drainage improvement district, consolidated drainage improvement district, or water-sewer district be merged with the irrigation district or irrigation districts, the names of the petitioners and the prayer thereof, and it shall notify all persons interested in the irrigation district to appear at the office of the board at the time named in the notice, and

show cause in writing why the proposed merger should not take place. The time to show cause shall be the regular meeting of the board of directors of the irrigation district next after the expiration of the time for the publication of the notice.

NEW SECTION. Sec. 77. Part headings as used in this act do not constitute any part of the law.

Passed the House March 16, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 154

[House Bill 1310]

PUBLIC UTILITY DISTRICTS—SERVICE OUTSIDE THE DISTRICT

AN ACT Relating to the authority of a public utility district to furnish water to persons outside of the district and the county where the district is located, and to establish local utility districts for water or sewer facilities outside of a district and the county where it is located; and amending RCW 54.16.030 and 54.16.120.

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

Sec. 1. RCW 54.16.030 and 1998 c 49 s 1 are each amended to read as follows:

A district may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof, and of the county in which the district is located, and any other persons including public and private corporations within or without ~~((its limits))~~ the limits of the district or the county, with an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof.

Sec. 2. RCW 54.16.120 and 1975 c 46 s 1 are each amended to read as follows:

A district may, by resolution, establish and define the boundaries of local assessment districts to be known as local utility district No. . . . , for distribution, under the general supervision and control of the commission, of water for all purposes, public and private, including domestic use, irrigation, and electric energy, and for providing street lighting, or any of them, and in like manner provide for the purchasing, or otherwise acquiring, or constructing and equipping and maintaining and operating distribution systems for such purposes, and for extensions and betterments thereof, and may levy and collect in accordance with the special benefits conferred thereon, special assessments and reassessments on property specially benefited thereby, for paying the cost and expense thereof, or any portions thereof, as herein provided, and issue local improvement bonds or

warrants or both to be repaid wholly or in part by collection of local improvement assessments. A district also may form local utility districts located entirely or in part outside its limits or the limits of the county in which the district is located to provide water, or sewer facilities if otherwise authorized under this title.

Passed the House March 5, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 155

[House Bill 1330]

STATE PARKS AND PARKWAYS—CONCESSIONS AND LEASES

AN ACT Relating to concessions or leases in state parks and parkways; and amending RCW 43.51.040.

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

Sec. 1. RCW 43.51.040 and 1989 c 175 s 106 are each amended to read as follows:

The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt, promulgate, issue, and enforce rules pertaining to the use, care, and administration of state parks and parkways. The commission shall cause a copy of the rules to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules as shall be adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than ~~((forty))~~ fifty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED FURTHER, That television station leases shall be subject to the provisions of RCW 43.51.063, only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year

intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways. Option agreements executed under authority of this subdivision shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions, or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

Passed the House February 24, 1999.

Passed the Senate April 15, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 156

[Engrossed Substitute House Bill 1471]

BUSINESS TELEPHONE LISTINGS—UNFAIR TRADE PRACTICES

AN ACT Relating to unfair trade practices regarding business telephone listings; and adding a new chapter to Title 19 RCW.

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

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

(1) "Local telephone directory" means a publication listing telephone numbers for various businesses in a certain geographic area and distributed free of charge to some or all telephone subscribers in that area.

(2) "Local telephone number" means a telephone number that can be dialed without incurring long distance charges from telephones located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers, toll-free numbers, or 900 exchange numbers listed in a local telephone directory.

(3) "Person" means an individual, partnership, limited liability partnership, corporation, or limited liability corporation.

NEW SECTION. Sec. 2. No person engaged in the selling, delivery, or solicitation of cut flowers, flower arrangements, or floral products may misrepresent his, her, or its geographic location by:

(1) Listing a local telephone number in a local telephone directory if:

(a) Calls to the telephone number are routinely forwarded or otherwise transferred to a business location that is outside the calling area covered by the local telephone directory; and

(b) The listing fails to conspicuously disclose the locality and state in which the business is located; or

(2) Listing a business name in a local telephone directory if:

(a) The name misrepresents the business's geographic location; and

(b) The listing fails to disclose the locality and state in which the business is located.

NEW SECTION. Sec. 3. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act constitute a new chapter in Title 19 RCW.

Passed the House March 12, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 157

[Substitute House Bill 1592]

WRITE-IN VOTING

AN ACT Relating to write-in voting; and amending RCW 29.04.180, 29.15.050, 29.62.180, and 29.54.050.

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

Sec. 1. RCW 29.04.180 and 1995 c 158 s 1 are each amended to read as follows:

Any person who desires to be a write-in candidate and have such votes counted at a primary or election may, if the jurisdiction of the office sought is entirely within one county, file a declaration of candidacy with the county auditor not later than the day before the primary or election. If the jurisdiction of the office sought encompasses more than one county the declaration of candidacy shall be filed with the secretary of state not later than the day before the primary or election. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29.15.050.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by political parties pursuant to RCW 29.18.160 need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if applicable. In order for write-in votes to be valid in jurisdictions employing optical-scan mark sense ballot systems the voter must complete the proper mark next to the write-in line for that office.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by RCW 29.15.010. No write-in candidate filing under RCW 29.04.180 may be included in any voter's pamphlet produced under chapter 29.80 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29.81A RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets.

Sec. 2. RCW 29.15.050 and 1990 c 59 s 85 are each amended to read as follows:

A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with

a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis(~~(, nor for the filing of any declaration of candidacy by a write-in candidate)~~).

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

Sec. 3. RCW 29.62.180 and 1995 c 158 s 2 are each amended to read as follows:

(1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29.04.180 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29.04.180 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) Write-in votes cast for an individual candidate for an office need not be tallied if(~~(, assuming all of these)~~) the total number of write-in votes (~~(were)~~) cast for the (~~(same person)~~) office is not greater than the number of votes cast for the candidate apparently nominated or elected, and the write-in votes could not have altered the outcome of the primary or election. In the case of write-in votes for state-wide office or for any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multicounty jurisdiction that it appears that the write-in votes could alter the outcome of the primary or election.

(4) In the case of state-wide offices or jurisdictions that encompass more than one county, if the total number of write-in votes cast for an office within a county is greater than the number of votes cast for a candidate apparently nominated or

ected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied.

Sec. 4. RCW 29.54.050 and 1990 c 59 s 56 are each amended to read as follows:

A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot; or, except for an absentee ballot, it is marked so as to identify the voter.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW ((29.51.170)) 29.62.180; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote.

Passed the House March 10, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 158

[Substitute House Bill 1593]

POLL-SITE BALLOT COUNTING DEVICES

AN ACT Relating to poll-site ballot counting devices; amending RCW 29.01.042, 29.04.040, 29.48.010, 29.48.080, 29.54.025, 29.54.037, 29.54.050, 29.54.075, and 29.54.085; adding a new section to chapter 29.01 RCW; adding a new section to chapter 29.48 RCW; adding new sections to chapter 29.51 RCW; adding new sections to chapter 29.54 RCW; and repealing RCW 29.48.040, 29.48.050, 29.48.060, 29.51.140, 29.62.060, and 29.62.070.

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

Sec. 1. RCW 29.01.042 and 1990 c 59 s 4 are each amended to read as follows:

"Counting center" means the facility or facilities designated by the county auditor ~~((in which the canvassing of ballots on a vote tallying system is conducted))~~ to count and canvass mail ballots, absentee ballots, and polling place ballots that are transferred to a central site to be counted, rather than being counted by a poll-site ballot counting device, on the day of a primary or election.

NEW SECTION. Sec. 2. A new section is added to chapter 29.01 RCW to read as follows:

"Poll-site ballot counting device" means a device programmed to accept voted ballots at a polling place for the purpose of tallying and storing the ballots on election day.

Sec. 3. RCW 29.04.040 and 1994 c 57 s 3 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))~~. The number of poll-site ballot counting devices at each polling place is at the discretion of the auditor. The number of devices must be adequate to meet the expected voter turnout.

(4) On petition of twenty-five or more voters resident more than ten miles from any ~~((place of election))~~ polling site, the county legislative authority shall establish a separate voting precinct therefor.

(5) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes ~~((county))~~ unincorporated territory to the city or town. 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 or town 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 29.48.010 and 1994 c 57 s 51 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.))~~

NEW SECTION. Sec. 5. A new section is added to chapter 29.48 RCW to read as follows:

Whenever poll-site ballot counting devices are used, the devices may either be included with the supplies required in RCW 29.48.030 or they may be delivered to the polling place separately. All poll-site ballot counting devices must be sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all seal numbers and device numbers used.

Sec. 6. RCW 29.48.080 and 1965 c 9 s 29.48.080 are each amended to read as follows:

In precincts where ~~((machines))~~ poll-site ballot counting devices are used the election officers, before ~~((unlocking))~~ initializing the ~~((machine))~~ device for voting, shall proceed as follows:

(1) They shall see that the ~~((voting-machine))~~ device is placed where it can be conveniently attended by the election officers and conveniently operated by the voters ~~((, and where, unless its construction requires otherwise, the ballot labels thereon can be plainly seen by the election officers and the public when not being voted on;~~

~~— (2) They shall see that the model is placed where each voter can conveniently operate it and receive instructions thereon as to the manner of voting, before entering the machine booth;~~

~~— (3) They shall post one diagram inside the polling room and one outside, in places where the voters can conveniently examine them;~~

~~— (4) They shall see that the lantern or other means provided for giving light is in such condition that the voting machine is sufficiently lighted to enable voters to readily read the names on the ballot labels;~~

~~— (5) They shall see that the ballot labels are in the proper places on the machine));~~

~~((6))~~ (2) They shall see whether the number or other designating mark on the device's seal ~~((sealing the machine, also the number registered on the protective counter))~~ agrees with the control number ~~((written on the envelope containing the keys))~~ provided by the elections department. If they do not agree they shall at once notify the ~~((custodian))~~ elections department and delay ~~((unlocking the machine;~~

~~and opening)) initializing the device. The polls ((until he has reexamined the machine)) may be opened pending reexamination of the device;~~

~~((7))~~ (3) If the numbers ~~((or marks on the envelope containing the keys and upon the machine))~~ do agree, they shall proceed to initialize the device and see whether the public counter ((and all the candidate and question counters)) registers "000." If ~~((any of))~~ the counter~~((s are))~~ is found to register a number other than "000((+)), one of the judges shall at once ~~((notify the custodian who shall set such))~~ set the counter at "000((+))" and confirm that the ballot box is empty;

~~((8))~~ ~~Where voting machines equipped with printed election returns mechanism are used, they shall proceed to operate the mechanism provided to produce one imprinted "before election inspection sheet" showing whether the candidate and question counters register "000". If said sheet has imprinted thereon any numbers below any candidate's name or below any question's designation other than "000" one of the judges shall, after the polls close, under the scrutiny of the other members of the board of election officials, deduct that number from that candidate's or question's total in the space provided for on the return sheet.~~

~~After performing their duties as provided in this section, the election officers shall certify thereto in the appropriate places on the statement of canvass as provided thereon. When the polls are declared open, one of the election officers shall break the seal and unlock the machine for voting.))~~

(4) Before processing any ballots through a poll-site ballot counting device a zero report must be produced. The inspector and at least one of the judges shall carefully verify that zero ballots have been run through the poll-site ballot counting device and that all vote totals for each office are zero. If the totals are not zero, the inspector shall either reset the device to zero or contact the elections department to reset the device and allow voting to continue using the auxiliary or emergency device.

NEW SECTION. Sec. 7. A new section is added to chapter 29.51 RCW to read as follows:

Each poll-site ballot counting device must be programmed to return all blank ballots and overvoted ballots to the voter for private reexamination. The election officer shall take whatever steps are necessary to ensure that the secrecy of the ballot is maintained. The precinct election officer shall provide information and instruction on how to properly mark the ballot. The voter may remark the original ballot, may request a new ballot under RCW 29.51.190, or may choose to complete a special ballot envelope and return the ballot as a special ballot.

NEW SECTION. Sec. 8. A new section is added to chapter 29.51 RCW to read as follows:

If a poll-site ballot counting device fails to operate at any time during polling hours, voting must continue, and the ballots must be deposited for later tabulation in a secure ballot compartment separate from the tabulated ballots.

Sec. 9. RCW 29.54.025 and 1990 c 59 s 30 are each amended to read as follows:

(1) The counting center in a county using voting systems shall be under the direction of the county auditor and shall be observed by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings shall be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(2) In counties in which ballots are not counted at the polling place, the political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct shall then be counted by the vote tallying system, and this result shall be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as scheduled if the observers are unable to attend.

Sec. 10. RCW 29.54.037 and 1990 c 59 s 31 are each amended to read as follows:

(1) At the direction of the county auditor, a team or teams composed of a representative of ~~((each))~~ at least two major political ~~((party))~~ parties shall stop at designated polling places and pick up the sealed containers of voted, untallied ballots for delivery to the counting center. There may be more than one delivery from each polling place. Two precinct election officials, ~~((one))~~ representing ~~((each))~~ two major political ~~((party))~~ parties, shall seal the voted ballots in containers furnished by the county auditor and properly identified with his or her address with uniquely prenumbered seals.

(2) At the counting center or the collection stations where the sealed ballot containers are delivered by the designated representatives of the major political parties, the county auditor or a designated representative of the county auditor shall receive the sealed ballot containers, record the time, date, precinct name or number, and seal number of each ballot container.

NEW SECTION. Sec. 11. A new section is added to chapter 29.54 RCW to read as follows:

The programmed memory pack for each poll-site ballot counting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown, the memory pack must remain sealed in the device until after the polls have closed and all reports and telephonic or electronic transfer of results are completed. After all reporting is complete the precinct election officers responsible for transferring the sealed voted ballots under RCW 29.54.075 shall ensure that the memory pack is returned to the elections department. If the entire poll-site ballot counting device is returned, the memory pack must remain sealed in the device. If the poll-site ballot counting device is to remain at the polling place, the precinct election officer shall break the seal on the device and remove the memory pack and seal and return it along with the irregularly voted ballots and special ballots to the elections department on election day.

NEW SECTION. Sec. 12. A new section is added to chapter 29.54 RCW to read as follows:

After the close of the polls, counties employing poll-site ballot counting devices may telephonically or electronically transmit the accumulated tally for each device to a central reporting location. Before making a telephonic or electronic transmission the precinct election officer must create a printed record of the results of the election for that poll site. During the canvassing period the results transmitted telephonically or electronically must be considered unofficial until a complete reconciliation of the results has been performed. This reconciliation may be accomplished by a direct loading of the results from the memory pack into the central accumulator, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device.

Sec. 13. RCW 29.54.050 and 1990 c 59 s 56 are each amended to read as follows:

A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot(+) or(~~,-except for an absentee ballot,-~~) it is marked so as to identify the voter.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW ((29.51.170)) 29.62.180; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote.

Sec. 14. RCW 29.54.075 and 1990 c 59 s 59 are each amended to read as follows:

Immediately after their tabulation, all ballots (~~shall~~) counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days. All ballots tallied by poll-site ballot counting devices must be returned to the elections department in sealed ballot containers on election day. Counties composed entirely of islands or portions of counties composed of islands shall collect the ballots within twenty-four hours of the close of the polls.

Ballots tabulated in poll-site ballot counting devices must be sealed by two of the election precinct officers at the polling place, and a log of the seal and the names of the people sealing the container must be completed. One copy of this log must be retained by the inspector, one copy must be placed in the ballot transfer case, and one copy must be transported with the ballots to the elections department, where the seal number must be verified by the county auditor or a designated representative. Ballots may be transported by one election employee if the container is sealed at the poll and then verified when returned to the elections department. Auditors using poll-site ballot counting devices may conduct early pickup of counted ballots on election day.

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under RCW 29.54.025(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record shall be added to any other record of the canvassing process in that county.

Sec. 15. RCW 29.54.085 and 1990 c 59 s 33 are each amended to read as follows:

(1) The ballots picked up from the precincts during the polling hours may be counted only at the counting center before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed as provided by RCW 29.54.018.

(2) Upon breaking the seals and opening the ballot containers from the precincts, all voted ballots shall be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots shall be kept by the county auditor until sixty days after the primary or election.

(3) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, write-in votes, and absentee votes, constitute the official returns of the primary or election in that county.

NEW SECTION. **Sec. 16.** The following acts or parts of acts are each repealed:

- (1) RCW 29.48.040 (Additional supplies for voting machines) and 1965 c 9 s 29.48.040;
- (2) RCW 29.48.050 (Receipt for key to voting machine) and 1965 c 9 s 29.48.050;
- (3) RCW 29.48.060 (Posting of instructions) and 1965 c 9 s 29.48.060;
- (4) RCW 29.51.140 (Mechanical voting devices—When all voters do not vote on all offices) and 1990 c 59 s 44 & 1965 c 9 s 29.51.140;
- (5) RCW 29.62.060 (Recanvass of machine votes—Notice—Representation—Relocking) and 1965 c 9 s 29.62.060; and
- (6) RCW 29.62.070 (Recanvass of machine votes—Procedure to test counting mechanism—Statement) and 1965 c 9 s 29.62.070.

Passed the House March 11, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 159

[Second Substitute House Bill 1661]

WASHINGTON SCHOLARS PROGRAM—ENROLLMENT IN WASHINGTON COLLEGES

AN ACT Relating to the Washington scholars program; amending RCW 28A.600.150 and 28B.80.245; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that approximately thirty-five percent of the recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150 choose to enroll in an out-of-state college and therefore do not use the grants that would have been available to them under RCW 28B.80.245 had they chosen to attend a college or university in the state of Washington. It is the intent of the legislature to require high school seniors who are announced as recipients of the Washington scholars award to demonstrate in a timely manner that they will be using any grants they may receive with their awards to enroll in a college or university in Washington state during the fall term of the same year in which they receive the award. Any grants not used by initial recipients should be awarded to alternate recipients who must also demonstrate in a timely manner that they will be using their grants to enroll in a Washington college or university in Washington state during the fall term.

Sec. 2. RCW 28A.600.150 and 1985 c 370 s 35 are each amended to read as follows:

~~(Washington scholars annually shall be selected from among the students so identified.)~~ Each year, three Washington scholars and one Washington scholars-alternate shall be selected from the students nominated under RCW 28A.600.140. The higher education coordinating board shall notify the students so designated,

their high school principals, the legislators of their respective districts, and the governor when final selections have been made.

The board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the Washington scholars (recipients) and the Washington scholars-alternates. An awards ceremony at an appropriate time and place shall be planned by the board in cooperation with the Washington association of secondary school principals, and with the approval of the governor.

Sec. 3. RCW 28B.80.245 and 1995 1st sp.s. c 5 s 3 are each amended to read as follows:

(1) Recipients of the Washington scholars award or the Washington scholars-alternate award under RCW 28A.600.100 through 28A.600.150 who choose to attend an independent college or university in this state, as defined in subsection (4) of this section, and recipients of the award named after June 30, 1994, who choose to attend a public college or university in the state may receive grants under this section if moneys are available. The higher education coordinating board shall distribute grants to eligible students under this section from moneys appropriated for this purpose. The individual grants shall not exceed, on a yearly basis, the yearly, full-time, resident, undergraduate tuition and service and activities fees in effect at the state-funded research universities. Grants to recipients attending an independent institution shall be contingent upon the institution matching on at least a dollar-for-dollar basis, either with actual money or by a waiver of fees, the amount of the grant received by the student from the state. The higher education coordinating board shall establish procedures, by rule, to disburse the awards as direct grants to the students.

(2) ~~((To qualify for the grant, recipients shall enter the in-state college or university within three years of high school graduation and))~~ The higher education coordinating board shall establish rules that provide for the annual awarding of grants, if moneys are available, to three Washington scholars per legislative district; and, if not used by an original recipient, to the Washington scholars-alternate from the same legislative district.

Beginning with scholars selected in the year 2000, if the recipients of grants fail to demonstrate in a timely manner that they will enroll in a Washington institution of higher education in the fall term of the academic year following the award of the grant or are deemed by the higher education coordinating board to have withdrawn from college during the first academic year following the award, then the grant shall be considered relinquished. The higher education coordinating board may then award any remaining grant amounts to the Washington scholars-alternate from the same legislative district if the grants are awarded within one calendar year of the recipient being named a Washington scholars-alternate. Washington scholars-alternates named as recipients of the grant must also demonstrate in a timely manner that they will enroll in a Washington institution of higher education during the next available term, as determined by the higher education coordinating board. The board may accept appeals and grant waivers to

the enrollment requirements of this section based on exceptional mitigating circumstances of individual grant recipients.

To maintain eligibility for the grants, recipients must maintain a minimum grade point average at the college or university equivalent to 3.30. Students shall be eligible to receive a maximum of twelve quarters or eight semesters of grants for undergraduate study and may transfer among in-state public and independent colleges and universities during that period and continue to receive the grant as provided under RCW 28B.80.246. If the student's cumulative grade point average falls below 3.30 during the first three quarters or two semesters, that student may petition the higher education coordinating board which shall have the authority to establish a probationary period until such time as the student's grade point average meets required standards.

(3) No grant shall be awarded to any student who is pursuing a degree in theology.

(4) As used in this section, "independent college or university" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, open to residents of the state, providing programs of education beyond the high school level leading at least to the baccalaureate degree, and accredited by the northwest association of schools and colleges as of June 9, 1988, and other institutions as may be developed that are approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited under this section.

(5) As used in this section, "public college or university" means an institution of higher education as defined in RCW 28B.10.016.

Passed the House March 12, 1999.

Passed the Senate April 15, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 160

[Substitute House Bill 1668]

FOSTER PARENTS—FIRST AID/CPR AND HIV/AIDS TRAINING

AN ACT Relating to foster parents; 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.** The legislature recognizes that Washington state is experiencing a significant shortage of quality foster homes and that the majority of children entering the system are difficult to place due to their complex needs. The legislature intends to provide additional assistance to those families willing to serve as foster parents.

NEW SECTION. **Sec. 2.** Foster parents are required to complete first aid/CPR and HIV/AIDS training to become licensed. The department of social and

health services may waive the first aid/CPR training if the foster parent has current certification or has professional background in this area. The department may waive the HIV/AIDS training if the foster parent has completed HIV/AIDS training in the last five years or has professional or educational background in this area. The cost of this mandatory training is a financial barrier for some people who consider becoming a foster parent. The department of social and health services shall provide all new and current foster parents with first aid/CPR and HIV/AIDS training.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

Passed the House March 12, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 161

[Substitute House Bill 1718]

STATE PARKS AND RECREATION COMMISSION—CONVEYANCE OF LAND TO CITY OF MOSES LAKE

AN ACT Relating to the disposal of state parks and recreation commission land in Moses Lake, Washington; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. Upon obtaining necessary waivers or other adequate legal assurances with respect to the removal or modification of any applicable deed restrictions or reversionary clauses, the state parks and recreation commission shall convey to the city of Moses Lake all property located within the city of Moses Lake that is currently developed for use as a state park, and additionally any land owned by the state parks and recreation commission that is adjacent to the land currently developed for use as a state park. The city of Moses Lake shall take all measures necessary to accept these lands into ownership.

The city of Moses Lake shall maintain as a city park all conveyed land for public outdoor recreation purposes. The title, and any other documents necessary for the transfer of these lands, will include covenants ensuring that the city of Moses Lake will maintain all conveyed land as a city park. If the city of Moses Lake breaches these covenants, ownership of all park lands conveyed under this act will revert to the state parks and recreation commission.

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

Passed the House March 16, 1999.
 Passed the Senate April 15, 1999.
 Approved by the Governor April 30, 1999.
 Filed in Office of Secretary of State April 30, 1999.

CHAPTER 162

[Substitute House Bill 1744]

OUTFLOW OF LAKES—PETITION FOR REGULATION

AN ACT Relating to regulation of outflow of lakes; and amending RCW 90.24.010.

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

Sec. 1. RCW 90.24.010 and 1985 c 398 s 28 are each amended to read as follows:

Ten or more owners of real property abutting on a ~~((meandered))~~ lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after notice to the department of fish and wildlife and a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any ~~((meandered))~~ lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

Passed the House March 11, 1999.
 Passed the Senate April 13, 1999.
 Approved by the Governor April 30, 1999.
 Filed in Office of Secretary of State April 30, 1999.

CHAPTER 163

[Substitute House Bill 2111]

TORT CLAIMS REVOLVING FUND—REPEALED

AN ACT Relating to the elimination of the tort claims revolving fund; amending RCW 4.92.130, 4.92.040, 4.92.160, 4.92.070, 10.01.150, and 28B.10.842; creating new sections; repealing RCW 4.92.135; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 4.92.130 and 1991 sp.s. c 13 s 92 are each amended to read as follows:

A liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of liability settlements and judgments against the state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of its officers, employees, and volunteers and all related legal defense costs.

(1) The purpose of the liability account is to: (a) Expediently pay legal liabilities and defense costs of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.

(2) The liability account shall be used to pay claims for injury and property damages (~~((exclusive of))~~ and legal defense costs (~~((and))~~ exclusive of agency-retained expenses otherwise budgeted.

(3) No money shall be paid from the liability account, except for defense costs, unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

(a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(b) The claim has been approved for payment.

(4) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.

(5) Annual premium levels shall be determined by the risk manager, with the consultation and advice of the risk management advisory committee and concurrence from the office of financial management. An actuarial study shall be conducted to assist in determining the appropriate level of funding.

(6) Disbursements for claims from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.

(7) The director of the office of financial management may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.

(8) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the office of risk management. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the office of risk management in order to maintain the account balance at the maximum limits. If, after adjustment of premiums, the account balance remains above the limits specified, the excess amount will be prorated back to the appropriate funds.

NEW SECTION. Sec. 2. Moneys in the tort claims revolving fund shall be deposited in the liability account on July 1, 1999, to be used for payment of settlements, judgments, and legal defense costs as provided in RCW 4.92.130.

Sec. 3. RCW 4.92.040 and 1986 c 126 s 4 are each amended to read as follows:

(1) No execution shall issue against the state on any judgment.

(2) Whenever a final judgment against the state is obtained in an action on a claim arising out of tortious conduct, the claim shall be paid from the (~~((tort claims revolving fund))~~) liability account.

(3) Whenever a final judgment against the state shall have been obtained in any other action, the clerk of the court shall make and furnish to the risk management office a duly certified copy of such judgment; the risk management office shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid from appropriations specifically provided for such purposes by law.

(4) Final judgments for which there are no provisions in state law for payment shall be transmitted by the risk management office to the senate and house of representatives committees on ways and means as follows:

(a) On the first day of each session of the legislature, the risk management office shall transmit judgments received and audited since the adjournment of the previous session of the legislature.

(b) During each session of legislature, the risk management office shall transmit judgments immediately upon completion of audit.

(5) All claims, other than judgments, made to the legislature against the state of Washington for money or property, shall be accompanied by a statement of the facts on which such claim is based and such evidence as the claimant intends to offer in support of the claim and shall be filed with the risk management office, which shall retain the same as a record. All claims of two thousand dollars or less shall be approved or rejected by the risk management office, and if approved shall be paid from appropriations specifically provided for such purpose by law. Such decision, if adverse to the claimant in whole or part, shall not preclude the claimant from seeking relief from the legislature. If the claimant accepts any part of his or her claim which is approved for payment by the risk management office, such acceptance shall constitute a waiver and release of the state from any further claims relating to the damage or injury asserted in the claim so accepted. The risk management office shall submit to the house and senate committees on ways and means, at the beginning of each regular session, a comprehensive list of all claims paid pursuant to this subsection during the preceding year. For all claims not approved by the risk management office, the risk management office shall recommend to the legislature whether such claims should be approved or rejected. Recommendations shall be submitted to the senate and house of representatives committees on ways and means not later than the thirtieth day of each regular session of the legislature. Claims which cannot be processed for timely submission of recommendations shall be held for submission during the following regular session of the legislature. The recommendations shall include, but not be limited to:

(a) A summary of the facts alleged in the claim, and a statement as to whether these facts can be verified by the risk management office;

(b) An estimate by the risk management office of the value of the loss or damage which was alleged to have occurred;

(c) An analysis of the legal liability, if any, of the state for the alleged loss or damage; and

(d) A summary of equitable or public policy arguments which might be helpful in resolving the claim.

(5) The legislative committees to whom such claims are referred shall make a transcript, recording, or statement of the substance of the evidence given in support of such a claim. If the legislature approves a claim the same shall be paid from appropriations specifically provided for such purpose by law.

(6) Subsections (3) through (5) of this section do not apply to judgments or claims against the state housing finance commission created under chapter 43.180 RCW.

Sec. 4. RCW 4.92.160 and 1991 c 187 s 3 are each amended to read as follows:

Payment of claims and judgments arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq. shall not be made by any agency or department of state government with the exception of the risk management office, and that office shall authorize and direct the payment of moneys only from the ~~((tort claims revolving fund))~~ liability account whenever:

(1) The head or governing body of any agency or department of state or the designee of any such agency certifies to the risk management office that a claim has been settled; or

(2) The clerk of court has made and forwarded a certified copy of a final judgment in a court of competent jurisdiction and the attorney general certifies that the judgment is final and was entered in an action on a claim arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to the clerk of the court for the benefit of the judgment creditors. Upon receipt of payment, the clerk shall satisfy the judgment against the state.

Sec. 5. RCW 4.92.070 and 1989 c 403 s 3 are each amended to read as follows:

If the attorney general shall find that said officer, employee, or volunteer's acts or omissions were, or were purported to be in good faith, within the scope of that person's official duties, or, in the case of a foster parent, that the occurrence arose from the good faith provision of foster care services, said request shall be granted, in which event the necessary expenses of the defense of said action or proceeding relating to a state officer, employee, or volunteer shall be paid as provided in RCW 4.92.130. In the case of a foster parent, necessary expenses of the defense shall be paid from the appropriations made for the support of the department to which such ~~((officer, employee, volunteer, or))~~ foster parent is attached. In such cases the attorney general shall appear and defend such officer, employee, volunteer, or foster parent, who shall assist and cooperate in the defense of such suit. However, the attorney general may not represent or provide private representation for a foster parent in an action or proceeding brought by the department of social and health services against that foster parent.

Sec. 6. RCW 10.01.150 and 1975 1st ex.s. c 144 s 1 are each amended to read as follows:

Whenever a state officer or employee is charged with a criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: **PROVIDED, HOWEVER,** If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the ~~((tort claims revolving fund))~~ liability account.

Sec. 7. RCW 28B.10.842 and 1975 c 40 s 4 are each amended to read as follows:

Whenever any action, claim, or proceeding is instituted against any regent, trustee, officer, employee, or agent of an institution of higher education or member of the governing body, officer, employee, or agent of an educational board arising out of the performance or failure of performance of duties for, or employment with such institution or educational board, the board of regents or board of trustees of the institution or governing body of the educational board may grant a request by such person that the attorney general be authorized to defend said claim, suit, or proceeding, and the costs of defense of such action shall be paid ~~((from the appropriation made for the support of the institution or educational board to which said person is attached))~~ as provided in RCW 4.92.130. If a majority of the members of a board of regents or trustees or educational board is or would be personally affected by such findings and determination, or is otherwise unable to reach any decision on the matter, the attorney general is authorized to grant a request. When a request for defense has been authorized, then any obligation for payment arising from such action, claim, or proceedings shall be paid from the ~~((tort claims revolving fund))~~ liability account, notwithstanding the nature of the claim, pursuant to the provisions of RCW 4.92.130 through 4.92.170, as now or hereafter amended: **PROVIDED,** That this section shall not apply unless the authorizing body has made a finding and determination by resolution that such regent, trustee, member of the educational board, officer, employee, or agent was acting in good faith.

NEW SECTION. **Sec. 8.** No later than ninety days after the close of the 1999-2001 fiscal biennium, the director of the department of general administration shall submit to the governor and the appropriate fiscal committees of the legislature

a report describing activities in the liability account. The report shall describe by agency: Liability account expenditures, categories of claims paid, defense costs paid, and funding of the liability account on an actuarial basis.

NEW SECTION. Sec. 9. RCW 4.92.135 (Tort claims revolving fund) and 1991 c 187 s 1 are each repealed.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

Passed the House March 5, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor April 30, 1999.

Filed in Office of Secretary of State April 30, 1999.

CHAPTER 164

[Engrossed Second Substitute Senate Bill 5594]

ECONOMIC VITALITY

AN ACT Relating to enhancing economic vitality; amending RCW 43.160.010, 43.160.020, 43.160.060, 43.160.070, 43.160.900, 43.160.200, 43.180.160, 82.60.020, 82.60.040, 82.60.070, 82.62.010, 82.62.030, 43.168.010, 43.168.020, 43.168.110, 43.168.120, 43.17.250, 43.155.070, 70.146.070, and 43.131.386; reenacting and amending RCW 43.160.076; adding a new section to chapter 43.63A RCW; adding a new section to chapter 82.60 RCW; adding a new section to chapter 82.62 RCW; adding a new section to chapter 43.168 RCW; creating new sections; repealing RCW 43.160.212; repealing 1997 c 367 s 11, 1995 c 226 s 8, 1993 c 316 s 7, and 1991 c 314 s 33 (uncodified); providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons. One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity.

PART I

RURAL ECONOMIC DEVELOPMENT

Enhanced Flexibility for Use of Community Economic Revitalization Board Funds

Sec. 101. RCW 43.160.010 and 1996 c 51 s 1 are each amended to read as follows:

(1) The legislature finds that it is the public policy of the state of Washington to direct financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of the inhabitants of the state. Reducing unemployment and reducing the time citizens remain jobless is important

for the economic welfare of the state. A valuable means of fostering economic development is the construction of public facilities which contribute to the stability and growth of the state's economic base. Strengthening the economic base through issuance of industrial development bonds, whether single or umbrella, further serves to reduce unemployment. Consolidating issues of industrial development bonds when feasible to reduce costs additionally advances the state's purpose to improve economic vitality. Expenditures made for these purposes as authorized in this chapter are declared to be in the public interest, and constitute a proper use of public funds. A community economic revitalization board is needed which shall aid the development of economic opportunities. The general objectives of the board should include:

(a) Strengthening the economies of areas of the state which have experienced or are expected to experience chronically high unemployment rates or below average growth in their economies;

(b) Encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment;

(c) Encouraging wider access to financial resources for both large and small industrial development projects;

(d) Encouraging new economic development or expansions to maximize employment;

(e) Encouraging the retention of viable existing firms and employment; and

(f) Providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment.

(2) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways ~~((in the vicinity of new)), county roads, or city streets for~~ industries considering locating or expanding in this state ~~((or existing industries that are considering significant expansion)).~~

(a) The legislature finds it desirable to provide a process whereby the need for diverse public works improvements necessitated by planned economic development can be addressed in a timely fashion and with coordination among all responsible governmental entities.

(b) ~~((It is the intent of the legislature to create an economic development account within the motor vehicle fund from which expenditures can be made by the department of transportation for state highway improvements necessitated by planned economic development.))~~ All ~~((such))~~ transportation improvements on state highways must first be approved by the state transportation commission and the community economic revitalization board in accordance with the procedures established by RCW 43.160.074 and 47.01.280. ~~((It is further the intent of the legislature that such improvements not jeopardize any other planned highway construction projects. The improvements are intended to be of limited size and~~

cost, and to include such items as additional turn lanes, signalization, illumination, and safety improvements:))

(3) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to assist development of telecommunications infrastructure that supports business development, retention, and expansion in rural natural resources impact areas and rural counties of the state.

(4) The legislature also finds that the state's economic development efforts can be enhanced by providing funds to improve markets for those recyclable materials representing a large fraction of the waste stream. The legislature finds that public facilities which result in private construction of processing or remanufacturing facilities for recyclable materials are eligible for consideration from the board.

~~((4))~~ (5) The legislature finds that sharing economic growth state-wide is important to the welfare of the state. Rural counties and rural natural resources impact areas do not share in the economic vitality of the Puget Sound region. The ability of these communities to pursue business and job retention, expansion, and development opportunities depends on their capacity to ready necessary economic development project plans, sites, permits, and infrastructure for private investments. Project-specific planning, predevelopment, and infrastructure ((is one of several)) are critical ingredients ((that are critical)) for economic development. Rural counties and rural natural resources impact areas generally lack ((the infrastructure)) these necessary tools and resources to diversify and revitalize their economies. It is, therefore, the intent of the legislature to increase the ((availability of funds to help provide infrastructure to rural natural resource impact areas)) amount of funding available through the community economic revitalization board for rural counties and rural natural resources impact areas, and to authorize flexibility for available resources in these areas to help fund planning, predevelopment, and construction costs of infrastructure and facilities and sites that foster economic vitality and diversification.

Sec. 102. RCW 43.160.020 and 1997 c 367 s 8 are each amended to read as follows:

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

(1) "Board" means the community economic revitalization board.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this chapter.

(3) "Department" means the department of community, trade, and economic development.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Industrial development facilities" means "industrial development facilities" as defined in RCW 39.84.020.

(6) "Industrial development revenue bonds" means tax-exempt revenue bonds used to fund industrial development facilities.

(7) "Local government" or "political subdivision" means any port district, county, city, town, special purpose district, and any other municipal corporations or quasi-municipal corporations in the state providing for public facilities under this chapter.

(8) "Sponsor" means any of the following entities which customarily provide service or otherwise aid in industrial or other financing and are approved as a sponsor by the board: A bank, trust company, savings bank, investment bank, national banking association, savings and loan association, building and loan association, credit union, insurance company, or any other financial institution, governmental agency, or holding company of any entity specified in this subsection.

(9) "Umbrella bonds" means industrial development revenue bonds from which the proceeds are loaned, transferred, or otherwise made available to two or more users under this chapter.

(10) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and receiving or applying to receive revenues from bonds issued under this chapter.

(11) "Public facilities" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of bridges, roads, domestic and industrial water, earth stabilization, sanitary sewer, storm sewer, railroad, electricity, telecommunications, transportation, natural gas, buildings or structures, and port facilities, all for the purpose of job creation, job retention, or job expansion.

(12) "Rural county" means a county with a population density of fewer than one hundred persons per square mile as determined by the office of financial management.

(13) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection ~~((13))~~ (14) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection ~~((13))~~ (14) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection ~~((13))~~ (14) of this section.

~~((13))~~ (14) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

Sec. 103. RCW 43.160.060 and 1996 c 51 s 5 are each amended to read as follows:

The board is authorized to make direct loans to political subdivisions of the state for the purposes of assisting the political subdivisions in financing the cost of public facilities, including development of land and improvements for public facilities, project-specific environmental, capital facilities, land use, permitting, feasibility and marketing studies and plans; project design, site planning, and analysis; project debt and revenue impact analysis; as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision and the finding by the board that ~~((unique))~~ financial circumstances ((exist. The board shall not obligate more than twenty percent of its biennial appropriation as grants)) require grant assistance to enable the project to move forward.

Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

(1) The board shall not provide financial assistance:

(a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.

(2) The board shall only provide financial assistance:

(a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, advanced technology, research and development, and industrial distribution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to ~~((distressed))~~ rural counties or rural natural resources impact areas; or (v) which substantially support the trading of goods or services outside of the state's borders.

(b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.

(c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made.

(3) The board shall prioritize each proposed project according to:

(a) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located~~((: As long as there is more demand for financial assistance than there are funds available, the board is instructed to fund projects in order of their priority))~~; and

(b) The rate of return of the state's investment, that includes the expected increase in state and local tax revenues associated with the project.

(4) A responsible official of the political subdivision shall be present during board deliberations and provide information that the board requests.

Before any financial assistance application is approved, the political subdivision seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

Sec. 104. RCW 43.160.070 and 1998 c 321 s 27 (Referendum Bill No. 49) are each amended to read as follows:

Public facilities financial assistance, when authorized by the board, is subject to the following conditions:

(1) The moneys in the public facilities construction loan revolving account and the distressed county public facilities construction loan account shall be used solely to fulfill commitments arising from financial assistance authorized in this chapter or, during the 1989-91 fiscal biennium, for economic development purposes as

appropriated by the legislature. The total outstanding amount which the board shall dispense at any time pursuant to this section shall not exceed the moneys available from the accounts. The total amount of outstanding financial assistance in Pierce, King, and Snohomish counties shall never exceed sixty percent of the total amount of outstanding financial assistance disbursed by the board under this chapter without reference to financial assistance provided under RCW 43.160.220.

(2) On contracts made for public facilities loans the board shall determine the interest rate which loans shall bear. The interest rate shall not exceed ten percent per annum. The board may provide reasonable terms and conditions for repayment for loans, including partial forgiveness of loan principal and interest payments on projects located in rural counties or rural natural resources impact areas, as the board determines. The loans shall not exceed twenty years in duration.

(3) Repayments of loans made from the public facilities construction loan revolving account under the contracts for public facilities construction loans shall be paid into the public facilities construction loan revolving account. Repayments of loans made from the distressed county public facilities construction loan account under the contracts for public facilities construction loans shall be paid into the distressed county public facilities construction loan account. Repayments of loans from moneys from the new appropriation from the public works assistance account for the fiscal biennium ending June 30, 1999, shall be paid into the public works assistance account.

(4) When every feasible effort has been made to provide loans and loans are not possible, the board may provide grants upon finding that unique circumstances exist.

Sec. 105. RCW 43.160.076 and 1998 c 321 s 28 (Referendum Bill No. 49) and 1998 c 55 s 4 are each reenacted and amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium under this chapter without reference to financial assistance provided under RCW 43.160.220, the board shall spend at least seventy-five percent for financial assistance for projects in ~~((distressed))~~ rural counties or rural natural resources impact areas. ~~((For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for financial assistance is filed, exceeds the average state unemployment for those years by twenty percent.))~~

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in ~~((distressed))~~ rural counties or rural natural resources impact areas are clearly insufficient to use up the seventy-five percent allocation under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in ~~((distressed))~~ rural counties or rural natural resources impact areas.

~~((3) This section expires June 30, 2000.))~~

**Sec. 106. RCW 43.160.900 and 1993 c 320 s 8 are each amended to read as follows:*

(1) The community economic revitalization board shall report to the appropriate standing committees of the legislature biennially on the implementation of this chapter. The report shall include information on the number of applications for community economic revitalization board assistance, the number and types of projects approved, the grant or loan amount awarded each project, the projected number of jobs created or retained by each project, the actual number of jobs created or retained by each project, the amount of state and local tax revenue generated by projects funded under this chapter, the number of delinquent loans, and the number of project terminations. The report may also include additional performance measures and recommendations for programmatic changes. The first report shall be submitted by December 1, 1994.

(2) The joint legislative audit and review committee shall conduct performance reviews on the effectiveness of the program administered by the board under this chapter. The committee may contract for services to conduct the performance reviews. The costs for the performance reviews shall be paid from repayments of principal and interest on loans made under this chapter. The performance reviews shall be submitted to the appropriate committees of the legislature by December 1, 2000, December 1, 2004, and December 1, 2008.

**Sec. 106 was vetoed. See message at end of chapter.*

Sec. 107. RCW 43.160.200 and 1996 c 51 s 9 are each amended to read as follows:

(1) The economic development account is created within the public facilities construction loan revolving fund under RCW 43.160.080. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 43.160.010(~~((3))~~) (5) and this section. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) Applications under this section for assistance from the economic development account are subject to all of the applicable criteria set forth under this chapter, as well as procedures and criteria established by the board, except as otherwise provided.

(3) Eligible applicants under this section are limited to political subdivisions of the state in rural natural resources impact areas (~~((that demonstrate, to the satisfaction of the board, the local economy's dependence on the forest products and salmon fishing industries))~~) and rural counties.

(4) Applicants must demonstrate that their request is part of an economic development plan consistent with applicable state planning requirements. Applicants must demonstrate that tourism projects have been approved by the local government. Industrial projects must be approved by the local government and the associate development organization.

(5) Publicly owned projects may be financed under this section upon proof by the applicant that the public project is a necessary component of, or constitutes in whole, a tourism project.

(6) Applications must demonstrate local match and participation. Such match may include: Land donation, other public or private funds or both, or other means of local commitment to the project.

(7) Board financing for project-specific environmental, capital facilities, land use, permitting, feasibility and marketing studies and plans; project engineering, design, and site planning and analysis; and project debt and revenue impact analysis shall not exceed ~~((twenty-five))~~ fifty thousand dollars per study. Board funds for ~~((feasibility studies))~~ these purposes may be provided as a grant and require a ~~((dollar for dollar))~~ match ~~((with up to one-half in-kind match allowed))~~.

(8) Board financing for tourism projects shall not exceed two hundred fifty thousand dollars. Other public facility construction projects under this section shall not exceed ~~((five hundred thousand))~~ one million dollars. Loans with flexible terms and conditions to meet the needs of the applicants shall be provided. Grants may also be authorized, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

(9) The board shall develop guidelines for allowable local match and ~~((feasibility studies))~~ planning and predevelopment activities.

(10) The board may allow de minimis general system improvements to be funded if they are critically linked to the viability of the economic development project assisted under this section.

(11) Applications under this section need not demonstrate evidence that specific private development or expansion is ready to occur or will occur if funds are provided.

~~((11))~~ (12) The board shall establish guidelines for providing financial assistance under this section to ensure that the requirements of this chapter are complied with. The guidelines shall include:

(a) A process to equitably compare and evaluate applications from competing communities.

(b) Criteria to ensure that approved projects will have a high probability of success and are likely to provide long-term economic benefits to the community. The criteria shall include: (i) A minimum amount of local participation, determined by the board per application, to verify community support for the project; (ii) an analysis that establishes the project is feasible using standard economic principles; and (iii) an explanation from the applicant regarding how the project is consistent with the communities' economic strategy and goals.

(c) A method of evaluating the impact of the financial assistance on the economy of the community and whether the financial assistance achieved its purpose.

PART II HOUSING

Increasing the Housing Finance Commission's Debt Limit

**Sec. 201. RCW 43.180.160 and 1996 c 310 s 2 are each amended to read as follows:*

The total amount of outstanding indebtedness of the commission may not exceed ~~((two))~~ three billion dollars at any time. The calculation of outstanding indebtedness shall include the initial principal amount of an issue and shall not include interest that is either currently payable or that accrues as a part of the face amount of an issue payable at maturity or earlier redemption. Outstanding indebtedness shall not include notes or bonds as to which the obligation of the commission has been satisfied and discharged by refunding or for which payment has been provided by reserves or otherwise.

**Sec. 201 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 202. A new section is added to chapter 43.63A RCW to read as follows:

The department shall establish and administer a "one-stop clearinghouse" to coordinate state assistance for growers and nonprofit organizations in developing housing for agricultural employees. Growers, housing authorities, and nonprofit organizations shall have direct access to the one-stop clearinghouse. The department one-stop clearinghouse shall provide assistance on planning and design, building codes, temporary worker housing regulations, financing options, and management to growers and nonprofit organizations interested in farmworker construction. The department one-stop clearinghouse shall also provide educational materials and services to local government authorities on Washington state law concerning farmworker housing.

PART III DISTRESSED AREA TAX INCENTIVES Distressed Area Sales and Use Tax Deferral

Sec. 301. RCW 82.60.020 and 1996 c 290 s 4 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) "Department" means the department of revenue.
- (3) "Eligible area" means ~~((: (a) A county in which the average level of unemployment for the three years before the year in which an application is filed under this chapter exceeds the average state unemployment for those years by twenty percent; (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (c) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which~~

the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; (d) a designated community empowerment zone approved under RCW 43.63A.700 or a county containing such a community empowerment zone; (e) a town with a population of less than twelve hundred persons in those counties that are not covered under (a) of this subsection that are timber impact areas as defined in RCW 43.31.601; (f) a county designated by the governor as an eligible area under RCW 82.60.047; or (g) a county that is contiguous to a county that qualifies as an eligible area under (a) or (f) of this subsection)) a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th.

(4)(a) "Eligible investment project" means((+)

—(i)) an investment project in an eligible area as defined in subsection (3)((a), (b), (e), (e), or (f)) of this section((+; or

—(ii) That portion of an investment project in an eligible area as defined in subsection (3)(d) or (g) of this section which is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested in an application approved before July 1, 1994, and for each seven hundred fifty thousand dollars of investment on which a deferral is requested in an application approved after June 30, 1994)).

(b) The lessor/owner of a qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(c) ((For purposes of (a)(ii) of this subsection:

—(i) The department shall consider the entire investment project, including any investment in machinery and equipment that otherwise qualifies for exemption under RCW 82.08.02565 or 82.12.02565, for purposes of determining the portion of the investment project that qualifies for deferral as an eligible investment project; and

—(ii) The number of new full-time qualified employment positions created by an investment project shall be deemed to be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project.

—(d)) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the

cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(6) "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 shall include the production or fabrication of specially made or custom made articles. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material 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. 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.

~~(9) ("Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year.~~

~~—((10))~~ "Qualified machinery and equipment" means all new 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.

~~((11))~~ (10) "Recipient" means a person receiving a tax deferral under this chapter.

~~((12))~~ (11) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

Sec. 302. RCW 82.60.040 and 1997 c 156 s 5 are each amended to read as follows:

(1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that(~~(:~~

~~—(a)) is located in an eligible area as defined in RCW 82.60.020((3)(a), (b), (c), (e), or (f);~~

~~—(b) Is located in an eligible area as defined in RCW 82.60.020(3)(g) if seventy-five percent of the new qualified employment positions are to be filled by residents of a contiguous county that is an eligible area as defined in RCW 82.60.020(3)(a) or (f); or~~

~~—(c) Is located in an eligible area as defined in RCW 82.60.020(3)(d) if seventy-five percent of the new qualified employment positions are to be filled by residents of a designated community empowerment zone approved under RCW 43.63A.700 located within the county in which the eligible investment project is located)).~~

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) This section expires July 1, 2004.

Sec. 303. RCW 82.60.070 and 1995 1st sp.s. c 3 s 9 are each amended to read as follows:

(1) ~~((Each recipient of a deferral granted under this chapter prior to July 1, 1994, shall submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid:))~~ Each recipient of a deferral granted under this chapter after June 30, 1994, shall submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter ~~((for reasons other than failure to create the required number of qualified employment positions)),~~ the amount of deferred taxes outstanding for the project shall be immediately due.

(3) ~~((If, on the basis of a report under this section or other information, the department finds that an investment project for which a deferral has been granted under this chapter prior to July 1, 1994, has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department shall assess interest, but not penalties, on the deferred taxes for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of deferral, and shall accrue until the deferred taxes are repaid:))~~

~~—(4) If, on the basis of a report under this section or other information, the department finds that an investment project for which a deferral has been granted under this chapter after June 30, 1994, has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes not eligible for deferral shall be immediately due. The department shall assess interest at the rate provided for delinquent excise taxes, but not penalties, retroactively to the date of deferral.~~

~~—(5) If, on the basis of a report under this section or other information, the department finds that an investment project qualifying for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under subsection (1) of this section, twelve and one-half percent of the amount of deferred taxes shall be immediately due. The department shall assess interest at the rate provided for delinquent excise taxes, but not penalties, retroactively to the date of deferral.~~

~~—(6)) Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995.~~

~~((7)) (4) Notwithstanding any other subsection of this section, deferred taxes on the following need not be repaid:~~

~~(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and~~

~~(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.~~

NEW SECTION. Sec. 304. A new section is added to chapter 82.60 RCW to read as follows:

(1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW 43.63A.700 or a county containing a community empowerment zone.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

(2) In addition to the provisions of RCW 82.60.040, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone in which the project is located. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) If a person does not meet the requirements of this section by the end of the calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

Distressed Area Business and Occupation Tax Job Credit

Sec. 305. RCW 82.62.010 and 1996 c 290 s 5 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 credit under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means(~~:(a) a county in which the average level of unemployment for the three years before the year in which an application is filed under this chapter exceeds the average state unemployment for those years by twenty percent; (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (c) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; (d) a designated community empowerment zone approved under RCW 43.63A.700; or (e) subcounty areas in those counties that are not covered under (a) of this subsection that are timber impact areas as defined in RCW 43.31.601~~) an area as defined in RCW 82.60.020.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility, provided the applicant's average full-time qualified employment positions at the specific facility will be at least fifteen percent greater in the year for which the credit is being sought than the applicant's average full-time qualified employment positions at the same facility in the immediately preceding year.

(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010(5) or that portion of a business project creating qualified full-time employment positions outside an eligible area or those recipients of a sales tax deferral under chapter 82.61 RCW.

(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 shall include the production or fabrication of specially made or custom made articles. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(6) "Person" has the meaning given in RCW 82.04.030.

(7) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during the entire tax year.

(8) "Tax year" means the calendar year in which taxes are due.

(9) "Recipient" means a person receiving tax credits under this chapter.

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

Sec. 306. RCW 82.62.030 and 1997 c 366 s 5 are each amended to read as follows:

(1) A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. ~~((For an application approved before January 1, 1996, the credit shall equal one thousand dollars for each qualified employment position directly created in an eligible business project. For an application approved on or after January 1, 1996, the credit shall equal two thousand dollars for each qualified employment position directly created in an eligible business project. For an application approved on or after July 1, 1997;))~~ The credit shall equal: (a) Four thousand dollars for each qualified employment position with wages and benefits greater than forty thousand dollars annually that is directly created in an eligible business ~~((For an application approved on or after July 1, 1997, the credit shall equal))~~ and (b) two thousand dollars for each qualified employment position with wages and benefits less than or equal to forty thousand dollars annually that is directly created in an eligible business.

(2) The department shall keep a running total of all credits granted under this chapter during each fiscal year. The department shall not allow any credits which would cause the tabulation to exceed ~~((five million five hundred thousand dollars in fiscal year 1998 or 1999 or))~~ seven million five hundred thousand dollars in any fiscal year ~~((thereafter))~~. If all or part of an application for credit is disallowed under this subsection, the disallowed portion shall be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the tabulation for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

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

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

NEW SECTION. Sec. 307. A new section is added to chapter 82.62 RCW to read as follows:

(1) For the purposes of this section "eligible area" also means a designated community empowerment zone approved under RCW 43.63A.700.

(2) An eligible business project located within an eligible area as defined in this section qualifies for a credit under this chapter for those employees who at the time of hire are residents of the community empowerment zone in which the project is located, if the fifteen percent threshold is met. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

PART IV ECONOMIC VITALITY COMMITTEE

****NEW SECTION. Sec. 401. (1) The legislature shall establish an ad hoc economic development group to analyze potential economic development projects of state-wide significance and recommend appropriate administrative or legislative actions.***

(2) The group shall include one representative each from the department of community, trade, and economic development, the department of agriculture, and the department of revenue as well as two representatives from rural economic development councils appointed by the legislature.

(3) The group shall promote economic development and business diversification throughout the state with special attention given to the economic difficulties of rural counties.

(4) In order to expedite coordinated responses, the governor may direct the group to meet on an emergency basis when projects of state-wide significance arise.

(5) The department of community, trade, and economic development shall establish criteria to determine whether a project meets the standards of a "project of state-wide significance." These criteria may include such economic indicators as local unemployment and personal income levels and project scope indicators such as the assessed value of the project in relation to the assessed value of the county.

***Sec. 401 was vetoed. See message at end of chapter.**

PART V
RURAL WASHINGTON LOAN FUND

Sec. 501. RCW 43.168.010 and 1985 c 164 s 1 are each amended to read as follows:

The legislature finds that:

(1) The economic health and well-being of the state, particularly in areas of high unemployment, economic stagnation, and poverty, is of substantial public concern.

(2) The consequences of minimal economic activity and persistent unemployment and underemployment are serious threats to the safety, health, and welfare of residents of these areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(3) The economic and social interdependence of communities and the vitality of industrial and economic activity necessitates, and is in part dependent on preventing substantial dislocation of residents and rebuilding the diversification of the areas' economy.

(4) The ability to remedy problems in stagnant areas of the state is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the problems of poverty and unemployment.

(5) The revitalization of depressed communities requires the stimulation of private investment, the development of new business ventures, the provision of capital to ventures sponsored by local organizations and capable of growth in the business markets, and assistance to viable, but under-financed, small businesses in order to create and preserve jobs that are sustainable in the local economy.

Therefore, the legislature declares there to be a substantial public purpose in providing capital to promote economic development and job creation in areas of economic stagnation, unemployment, and poverty. To accomplish this purpose, the legislature hereby creates the rural Washington (~~state development~~) loan fund (~~committee~~) and vests in the (~~committee~~) department of community, trade, and economic development the authority to spend federal funds to stimulate the economy of distressed areas.

Sec. 502. RCW 43.168.020 and 1996 c 290 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) (~~"Committee" means the Washington state development loan fund committee.~~

~~—(2))~~ "Department" means the department of community, trade, and economic development.

~~((3))~~ (2) "Director" means the director of community, trade, and economic development.

~~((4))~~ (3) "Distressed area" means: (a) A rural county; (b) a county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; ~~((b))~~ (c) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; ~~((e))~~ (d) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; ~~((4))~~ (e) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate; or ~~((e))~~ (f) a county designated as a rural natural resources impact area under RCW 43.31.601 if an application is filed by July 1, 1997. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects.

~~((5))~~ (4) "Fund" means the rural Washington ~~((state development))~~ loan fund.

~~((6))~~ (5) "Local development organization" means a nonprofit organization which is organized to operate within an area, demonstrates a commitment to a long-standing effort for an economic development program, and makes a demonstrable effort to assist in the employment of unemployed or underemployed residents in an area.

~~((7))~~ (6) "Project" means the establishment of a new or expanded business in an area which when completed will provide employment opportunities. "Project" also means the retention of an existing business in an area which when completed will provide employment opportunities.

(7) "Rural county" means a county with a population density of fewer than one hundred persons per square mile as determined by the office of financial management.

NEW SECTION. Sec. 503. A new section is added to chapter 43.168 RCW to read as follows:

In addition to the requirements of RCW 43.168.050, the department shall, subject to applicable federal funding criteria, give priority to applications that capitalize or recapitalize an existing or new local revolving fund based on criteria established by the department.

Sec. 504. RCW 43.168.110 and 1992 c 235 s 11 are each amended to read as follows:

There is established the rural Washington ~~((state development))~~ loan fund which shall be an account in the state treasury. All loan payments of principal and interest which are transferred under RCW 43.168.050 shall be deposited into the account. Moneys in the account may be spent only after legislative appropriation for loans under this chapter. Any expenditures of these moneys shall conform to federal law.

Sec. 505. RCW 43.168.120 and 1987 c 461 s 6 are each amended to read as follows:

(1) The ~~((committee))~~ department shall develop guidelines for ~~((development))~~ rural Washington loan funds to be used to fund existing economic development revolving loan funds. Consideration shall be given to the selection process for grantees, loan quality criteria, legal and regulatory issues, and ways to minimize duplication between ~~((development))~~ rural Washington loan funds and local economic development revolving loan funds.

(2) If it appears that all of the funds appropriated to the ~~((development loan))~~ fund for a biennium will not be fully granted to local governments within that biennium, the ~~((committee))~~ department may make available up to twenty percent of the eighty percent of the funds available to projects in distressed areas under RCW 43.168.050~~((9))~~ (10) for grants to local governments to assist existing economic development revolving loan funds in distressed areas. The grants to local governments shall be utilized to make loans to businesses that meet the specifications for loans under this chapter. The local governments shall, to the extent permitted under federal law, agree to convey to the ~~((development loan))~~ fund the principal and interest payments from existing loans that the local governments have made through their revolving loan funds. Under circumstances where the federal law does not permit the ~~((committee))~~ department to require such transfer, the ~~((committee))~~ department shall give priority to applications where the applicants on their own volition make commitments to provide for the transfer.

PART VI PUBLIC FACILITIES GRANTS AND LOANS

Sec. 601. RCW 43.17.250 and 1991 sp.s. c 32 s 25 are each amended to read as follows:

(1) Whenever a state agency is considering awarding grants or loans for a county, city, or town planning under RCW 36.70A.040 to finance public facilities, it shall consider whether the county, city, or town ~~((that is))~~ requesting the grant or loan ~~((is a party to a county-wide planning policy under RCW 36.70A.210 relating to the type of public facility for which the grant or loan is sought, and shall accord additional preference to the county, city, or town if such county-wide planning policy exists))~~ has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(2) When reviewing competing requests from counties, cities, or towns planning under RCW 36.70A.040, a state agency considering awarding grants or

loans for public facilities shall accord additional preference to those counties, cities, or towns that have adopted a comprehensive plan and development regulations as required by RCW 36.70A.040. For the purposes of the preference accorded in this section, a county, city, or town planning under RCW 36.70A.040 is deemed to have satisfied the requirements for adopting a comprehensive plan and development regulations specified in RCW 36.70A.040 if the county, city, or town:

(a) Adopts or has adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040;

(b) Adopts or has adopted a comprehensive plan and development regulations before submitting a request for a grant or loan if the county, city, or town failed to adopt a comprehensive plan and/or development regulations within the time periods specified in RCW 36.70A.040; or

(c) Demonstrates substantial progress toward adopting a comprehensive plan or development regulations within the time periods specified in RCW 36.70A.040. A county, city, or town that is more than six months out of compliance with the time periods specified in RCW 36.70A.040 shall not be deemed to demonstrate substantial progress for purposes of this section.

(3) The preference specified in subsection (2) of this section applies only to competing requests for grants or loans from counties, cities, or towns planning under RCW 36.70A.040. A request from a county, city, or town planning under RCW 36.70A.040 shall be accorded no additional preference based on subsection (2) of this section over a request from a county, city, or town not planning under RCW 36.70A.040.

(4) Whenever a state agency is considering awarding grants or loans ((to a special district)) for public facilities to a special district requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town in whose planning jurisdiction the proposed facility is located ((is a party to a county-wide planning policy under RCW 36.70A.210 relating to the type of public facility for which the grant or loan is sought)) has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040 and shall apply the preference specified in subsection (2) of this section and restricted in subsection (3) of this section.

Sec. 602. RCW 43.155.070 and 1997 c 429 s 29 are each amended to read as follows:

(1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a long-term plan for financing public works needs; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors(~~(-and)~~).

~~((d))~~ (2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town ~~((that is required or chooses to plan))~~ planning under RCW 36.70A.040 must have adopted a comprehensive plan ~~((in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted)),~~ including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a loan or loan guarantee under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a loan or loan guarantee under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a loan or loan guarantee.

(3) In considering awarding loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

~~((2))~~ (4) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(f) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(g) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(h) Other criteria that the board considers advisable.

~~((3))~~ (5) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

~~((4))~~ (6) Before November 1 of each year, the board shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection ~~((7))~~ (9) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

~~((5))~~ (7) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

~~((6))~~ (8) Subsection ~~((5))~~ (7) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection ~~((7))~~ (9) of this section.

~~((7))~~ (9)(a) Loans made for the purpose of capital facilities plans shall be exempted from subsection ~~((5))~~ (7) of this section. In no case shall the total amount of funds utilized for capital facilities plans and emergency loans exceed the limitation in RCW 43.155.065.

(b) For the purposes of this section "capital facilities plans" means those plans required by the growth management act, chapter 36.70A RCW, and plans required

by the public works board for local governments not subject to the growth management act.

~~((8))~~ (10) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

Sec. 603. RCW 70.146.070 and 1997 c 429 s 30 are each amended to read as follows:

(1) When making grants or loans for water pollution control facilities, the department shall consider the following:

~~((1))~~ (a) The protection of water quality and public health;

~~((2))~~ (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

~~((3))~~ (c) Actions required under federal and state permits and compliance orders;

~~((4))~~ (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

~~((5))~~ (e) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

~~((6))~~ (f) The recommendations of the Puget Sound action team and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town ~~((that is required or chooses to plan))~~ planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan ~~((in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, or unless it has adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted)), including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this~~

chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

PART VII REPEALED SECTIONS

Sec. 701. RCW 43.131.386 and 1997 c 367 s 19 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, 2001:

(1) RCW 43.31.601 and 1997 c 367 s 1, 1995 c 226 s 1, 1992 c 21 s 2, & 1991 c 314 s 2;

(2) RCW 43.31.641 and 1997 c 367 s 6, 1995 c 226 s 4, 1993 c 280 s 50, & 1991 c 314 s 7;

(3) RCW 50.22.090 and (~~(1995 c 226 s 5, 1993 c 316 s 10, 1992 c 47 s 2, & 1991 c 315 s 4)~~) 1997 c 367 s 4;

(4) (~~(RCW 43.160.212 and 1996 c 168 s 4, 1995 c 226 s 6, & 1993 c 316 s 5;~~ ~~(5))~~) RCW 43.63A.021 and 1997 c 367 s 5 & 1995 c 226 s 11;

(~~(6)~~) (5) RCW 43.63A.600 and 1995 c 226 s 12, 1994 c 114 s 1, 1993 c 280 s 77, & 1991 c 315 s 23;

(~~(7)~~) (6) RCW 43.63A.440 and 1997 c 367 s 7, 1995 c 226 s 13, 1993 c 280 s 74, & 1989 c 424 s 7;

(~~(8)~~ RCW 43.160.200 and 1995 c 226 s 16, 1993 c 320 s 7, 1993 c 316 s 4, & 1991 c 314 s 23;

~~(9))~~ (7) RCW 28B.50.258 and 1995 c 226 s 18 & 1991 c 315 s 16;

(~~(10)~~) (8) RCW 28B.50.262 and 1995 c 226 s 19 & 1994 c 282 s 3;

(~~(11)~~) (9) RCW 28B.80.570 and 1997 c 367 s 14, 1995 c 226 s 20, 1992 c 21 s 6, & 1991 c 315 s 18;

(~~(12)~~) (10) RCW 28B.80.575 and 1995 c 269 s 1001, 1995 c 226 s 21, & 1991 c 315 s 19;

(~~(13)~~) (11) RCW 28B.80.580 and 1997 c 367 s 15, 1995 c 226 s 22, 1993 sp.s. c 18 s 34, 1992 c 231 s 31, & 1991 c 315 s 20;

(~~(14)~~) (12) RCW 28B.80.585 and 1995 c 226 s 23 & 1991 c 315 s 21;

(~~(15)~~) (13) RCW 43.17.065 and 1995 c 226 s 24, 1993 c 280 s 37, 1991 c 314 s 28, & 1990 1st ex.s. c 17 s 77;

(~~(16)~~) (14) RCW 43.20A.750 and (~~(1995 c 226 s 25, 1993 c 280 s 38, 1992 c 21 s 4, & 1991 c 153 s 28)~~) 1997 c 367 s 16;

(~~(17)~~) (15) RCW 43.168.140 and 1995 c 226 s 28 & 1991 c 314 s 20;

~~((18))~~ (16) RCW 50.12.270 and 1997 c 367 s 17, 1995 c 226 s 30, & 1991 c 315 s 3;

~~((19))~~ (17) RCW 50.70.010 and 1995 c 226 s 31, 1992 c 21 s 1, & 1991 c 315 s 5; and

~~((20))~~ (18) RCW 50.70.020 and 1995 c 226 s 32 & 1991 c 315 s 6.

NEW SECTION. Sec. 702. RCW 43.160.212 (Rural natural resources impact areas—Loans for public works facilities) and 1996 c 168 s 4, 1995 c 226 s 6, 1993 c 316 s 5, 1992 c 21 s 8, & 1991 c 314 s 26 are each repealed.

NEW SECTION. Sec. 703. 1997 c 367 s 11, 1995 c 226 s 8, 1993 c 316 s 7, & 1991 c 314 s 33 (uncodified) are each repealed.

PART VIII MISCELLANEOUS

NEW SECTION. Sec. 801. Part headings and subheadings used in this act are not any part of the law.

NEW SECTION. Sec. 802. This act takes effect August 1, 1999.

NEW SECTION. Sec. 803. Sections 301 through 303, 305, 306, and 601 through 603 of this act do not affect any existing right acquired or liability or obligation under the sections amended or repealed in those sections or any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

NEW SECTION. Sec. 804. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 24, 1999.

Passed the House April 24, 1999.

Approved by the Governor May 3, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 3, 1999.

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

"I am returning herewith, without my approval as to sections 106, 201 and 401, Engrossed Second Substitute Senate Bill No. 5594 entitled:

"AN ACT Relating to enhancing economic vitality;"

E2SSB 5594 is an omnibus rural economic development bill. Among other things it will provide the Community Economic Revitalization Board (CERB) with greater ability to fund new types of infrastructure projects; it will create the Rural Washington Loan Fund for making direct loans to business in eligible areas with federal money; and it will create a one-stop clearinghouse in the Department of Community, Trade and Economic Development (CTED) for farmworker housing.

Section 106 of the bill would require the joint legislative audit and review committee to conduct performance reviews of the program administered by CERB. JLARC is an entity controlled by the legislature, so it is unnecessary and unwise to dictate the work schedule of JLARC in statute. The legislature can authorize funding for such performance reviews any time it believes they are warranted.

Section 201 of the bill is identical to section 2 of Engrossed Senate Bill No. 5843 which I signed on April 28, 1999, and is unnecessary.

Section 401 of the bill would establish an ad hoc economic development group to analyze projects, make recommendations, and to promote economic development and business diversification. The membership of the group is unclear, and I have concerns about violation of the separation of powers doctrine. The group would be organized by the legislature, but have control over executive agencies. A process already exists in CTED for using a similar ad hoc groups. Additionally, I will be organizing an economic development sub-cabinet, chaired by my Chief of Staff, to provide greater input on projects of statewide significance.

For these reasons, I have vetoed sections 106, 201 and 401 of Engrossed Second Substitute Senate Bill No. 5594.

With the exception of sections 106, 201 and 401, Engrossed Second Substitute Senate Bill No. 5594 is approved."

CHAPTER I65

[Second Substitute Senate Bill 5452]

PUBLIC FACILITIES DISTRICTS

AN ACT Relating to funding for regional convention, conference, or special events centers; amending RCW 82.14.048, 82.14.050, 36.100.060, 36.100.030, 35.21.280, 36.38.010, and 82.29A.130; adding a new section to chapter 82.14 RCW; adding new sections to chapter 36.100 RCW; and adding a new chapter to Title 35 RCW.

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

NEW SECTION. Sec. I. (1) The legislative authority of any town or city located in a county with a population of less than one million may create a public facilities district. The legislative authorities of any contiguous group of towns or cities located in a county or counties each with a population of less than one million may enter an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(2) A public facilities district shall be coextensive with the boundaries of the city or town or contiguous group of cities or towns that created the district.

(3)(a) A public facilities district created by a single city or town shall be governed by a board of directors consisting of five members selected as follows: (i) Two members appointed by the legislative authority of the city or town; and (ii) three members appointed by legislative authority based on recommendations from local organizations. The members appointed under (a)(i) of this subsection, shall not be members of the legislative authority of the city or town. The members appointed under (a)(ii) of this subsection, shall be based on recommendations received from local organizations that may include, but are not limited to the local chamber of commerce, local economic development council, and local labor council. The members shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(b) A public facilities district created by contiguous group of cities and towns shall be governed by a board of directors consisting of seven members selected as

follows: (i) Three members appointed by the legislative authorities of the cities and towns; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (b)(i) of this subsection shall not be members of the legislative authorities of the cities and towns. The members appointed under (b)(ii) of this subsection, shall be based on recommendations received from local organizations that include, but are not limited to the local chamber of commerce, local economic development council, local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

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

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

(6) A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. No direct or collateral attack on any metropolitan facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the city legislative authority.

NEW SECTION. Sec. 2. (1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers. For purposes of this chapter, "regional center" means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving a regional population constructed, improved, or rehabilitated after the effective date of this section at a cost of at least ten million dollars, including debt service. "Regional center" also includes an existing convention, conference, or special events center, and related parking facilities, serving a regional population, that is improved or rehabilitated after the effective date of this section where the costs of improvement or rehabilitation are at least ten million dollars, including debt service. A regional center is conclusively presumed to serve a regional population if state and local government investment in the construction, improvement, or rehabilitation of the regional center is equal to or greater than ten million dollars.

(2) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations for the purpose of a regional center.

(3) A public facilities district may impose charges, fees, and taxes authorized in section 4 of this act, and use revenues derived therefrom for the purpose of paying principal and interest payments on bonds issued by the public facilities district to construct a regional center.

(4) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(5) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center.

NEW SECTION. Sec. 3. (1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter-approved general obligation indebtedness, equal to one-half of one 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. A facilities district additionally may issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount 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 authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by taxes authorized in this act.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and shall be issued and sold in accordance with the provisions of chapter 39.46 RCW.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district.

NEW SECTION. Sec. 4. (1) The board of directors of the public facilities district may impose the following for the purpose of funding a regional center:

- (a) Charges and fees for the use of any of its facilities;
- (b) Admission charges under section 10 of this act;
- (c) Vehicle parking charges under section 11 of this act; and
- (d) Sales and use taxes authorized under RCW 82.14.048 and section 13 of this act.

(2) The board may accept and expend or use gifts, grants, and donations for the purpose of a regional center. The revenue from the charges, fees, and taxes imposed under this section shall be used only for the purposes authorized by this chapter.

NEW SECTION. **Sec. 5.** The board of directors of the public facilities district shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such district officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the district. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public facilities district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses.

NEW SECTION. **Sec. 6.** The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining a regional center. Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election.

NEW SECTION. **Sec. 7.** The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution.

NEW SECTION. **Sec. 8.** In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in RCW 43.19.1906 and 43.19.1911 for all purchases, contracts for purchase, and sales.

NEW SECTION. **Sec. 9.** (1) A public facilities district may issue revenue bonds to fund revenue-generating facilities, or portions of facilities, which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the board of directors of the district shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on such revenue bonds shall exclusively be payable. The board may obligate the district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, or facilities, and all related additions, that are funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The board shall have due regard for the cost of operation and maintenance of the public improvements, projects, or facilities, or additions, that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the

revenue so previously pledged. The board may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued under this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created under RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued under this section shall not have any claim against the district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created under RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued under this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The board of directors of the district shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued.

NEW SECTION. Sec. 10. A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile.

NEW SECTION. Sec. 11. A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center. No county or city or town within which the regional center is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility. For the purposes of this

section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent.

Sec. 12. RCW 82.14.048 and 1995 c 396 s 6 are each amended to read as follows:

The governing board of a public facilities district under chapter 36.100 RCW or chapter 35.—RCW (sections 1 through 11 of this act) may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall ~~((equal one-tenth))~~ not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

Moneys received from any tax imposed under this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities.

No tax may be collected under this section by a public facilities district under chapter 35.—RCW (sections 1 through 11 of this act) before August 1, 2000, and no tax in excess of one-tenth of one percent may be collected under this section by a public facilities district under chapter 36.100 RCW before August 1, 2000.

NEW SECTION. Sec. 13. A new section is added to chapter 82.14 RCW to read as follows:

(1) Except as provided in subsection (6) of this section, the governing body of a public facilities district created under chapter 35.—RCW (sections 1 through 11 of this act) or chapter 36.100 RCW that commences construction of a new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2003, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

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

(3) No tax may be collected under this section before August 1, 2000. The tax imposed in this section shall expire when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(4) Moneys collected under this section shall only be used for the purposes set forth in section 2 of this act and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter approved taxes authorized under chapter 35.— RCW (sections 1 through 11 of this act) or nonvoter approved taxes authorized under chapter 36.100 RCW shall not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.

(5) The combined total tax levied under this section shall not be greater than 0.033 percent. If both a public facilities district created under chapter 35.— RCW (sections 1 through 11 of this act) and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.— RCW (sections 1 through 11 of this act) shall be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(6) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494.

Sec. 14. RCW 82.14.050 and 1991 sp.s. c 13 s 34 are each amended to read as follows:

The counties, cities, and transportation authorities under RCW 82.14.045 and public facilities districts under chapter 36.100 RCW and chapter 35.— RCW (sections 1 through 11 of this act) shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter which is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, and public facilities districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are

applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, and public facilities districts monthly.

Sec. 15. RCW 36.100.060 and 1995 1st sp.s. c 14 s 4 are each amended to read as follows:

(1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to one-half of one percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015. A facilities district additionally may issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, when authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by excess property tax levies as provided in this chapter.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and shall be issued and sold in accordance with the provisions of chapter 39.46 RCW.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district.

(4) The excise tax imposed pursuant to RCW 36.100.040 shall terminate upon final payment of all bonded indebtedness for its public facilities, except that the excise tax may be reauthorized by a public vote, in the same manner as originally authorized, for funding of additional public facilities or a regional center.

Sec. 16. RCW 36.100.030 and 1995 1st sp.s. c 14 s 3 are each amended to read as follows:

(1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate sports facilities, entertainment facilities, ((or)) convention facilities, or ~~((any combination of such facilities))~~ regional centers as defined in section 2 of this act, together with contiguous parking facilities. The taxes that are provided for in this chapter may only be imposed for these purposes.

(2) A public facilities district may enter into agreements under chapter 39.34 RCW for the joint provision and operation of such facilities and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates such facilities for the other party or parties to the contract.

(3) Notwithstanding the establishment of a career, civil, or merit service system, a public facility [facilities] district may contract with a public or private entity for the operation or management of its public facilities.

(4) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any of its public facilities.

(5) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations.

NEW SECTION. **Sec. 17.** A new section is added to chapter 36.100 RCW to read as follows:

A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center, as defined in section 2 of this act. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile.

NEW SECTION. **Sec. 18.** A new section is added to chapter 36.100 RCW to read as follows:

A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center, as defined in section 2 of this act. No county or city or town within which the regional center is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent.

Sec. 19. RCW 35.21.280 and 1995 3rd sp.s. c 1 s 202 are each amended to read as follows:

Every city and town may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to any place: **PROVIDED**, No city or town shall impose such tax on persons paying an admission to any activity of any elementary or secondary school or any public facility of a public facility district under chapter 35.— RCW (sections

1 through 11 of this act) or chapter 36.100 RCW for which a tax is imposed under section 10 or 17 of this act. This includes a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same privileges or accommodations. A city that is located in a county with a population of one million or more may not levy a tax on events in stadia constructed on or after January 1, 1995, that are owned by a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand. The city or town may require anyone who receives payment for an admission charge to collect and remit the tax to the city or town.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment in any place where free entertainment, recreation or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile.

Sec. 20. RCW 36.38.010 and 1997 c 220 s 301 (Referendum Bill No. 48) are each amended to read as follows:

(1) Any county may by ordinance enacted by its county legislative authority, levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid for county purposes by persons who pay an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations; and require that one who receives any admission charge to any place shall collect and remit the tax to the county treasurer of the county: **PROVIDED**, No county shall impose such tax on persons paying an admission to any activity of any elementary or secondary school or any public facility of a public facility district under chapter 35.— RCW (sections 1 through 11 of this act) or chapter 36.100 RCW for which a tax is imposed under section 10 or 17 of this act.

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

admission charge. It shall also include any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.

(3) Subject to subsections (4) and (5) of this section, the tax herein authorized shall not be exclusive and shall not prevent any city or town within the taxing county, when authorized by law, from imposing within its corporate limits a tax of the same or similar kind: PROVIDED, That whenever the same or similar kind of tax is imposed by any such city or town, no such tax shall be levied within the corporate limits of such city or town by the county.

(4) Notwithstanding subsection (3) of this section, the legislative authority of a county with a population of one million or more may exclusively levy taxes on events in baseball stadiums constructed on or after January 1, 1995, that are owned by a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand at the rates of:

(a) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. If the revenue from the tax exceeds the amount needed for that purpose, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction; and

(b) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. The tax imposed under this subsection (4)(b) shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the tax is first collected.

(5) Notwithstanding subsection (3) of this section, the legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may levy and fix a tax on charges for admission to events in a stadium and exhibition center, as defined in RCW 36.102.010, constructed in the county on or after January 1, 1998, that is owned by a public stadium authority under chapter 36.102 RCW. The tax shall be exclusive and shall preclude the city or town within which the stadium and exhibition center is located from imposing a tax of the same or similar kind on charges for admission to events in the stadium and exhibition center, and shall preclude the imposition of a general county admissions tax on charges for admission to events in the stadium and exhibition center. For the purposes of this subsection, "charges for admission to events" means only the actual admission charge, exclusive of taxes and service charges and the value of any other benefit conferred by the admission. The tax authorized under this subsection shall be at the rate of not more than one cent on ten cents or fraction thereof. Revenues collected under this subsection shall be deposited in the stadium and exhibition center account under RCW 43.99N.060

until the bonds issued under RCW 43.99N.020 for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section shall be used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this subsection may be levied upon the first use of any part of the stadium and exhibition center but shall not be collected at any facility already in operation as of July 17, 1997.

Sec. 21. RCW 82.29A.130 and 1997 c 220 s 202 (Referendum Bill No. 48) are each amended to read as follows:

The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: **PROVIDED**, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: **PROVIDED**, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the

department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use or possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used

for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 RCW or chapter 35.— RCW (sections 1 through 11 of this act).

NEW SECTION. Sec. 22. Sections 1 through 11 of this act constitute a new chapter in Title 35 RCW.

NEW SECTION. Sec. 23. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 21, 1999.

Passed the House April 14, 1999.

Approved by the Governor May 4, 1999.

Filed in Office of Secretary of State May 4, 1999.

CHAPTER 166

[Engrossed Second Substitute House Bill 2085]

DISRUPTIVE STUDENTS

AN ACT Relating to programs addressing disruptive students in regular classrooms; adding a new section to chapter 28A.415 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 disruptive students can significantly impede effective teaching and learning in the classroom. Training in effective strategies for handling disruptive students will help principals, teachers, and other staff gain additional skills to provide a classroom environment that is conducive to teaching and learning. Schools and school districts should be encouraged to provide staff with the training necessary to respond to disruptions effectively.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.415 RCW to read as follows:

(1) To the extent funds are appropriated, the superintendent of public instruction shall conduct professional development institutes to provide opportunities for teachers, principals, and other school staff to learn effective research-based strategies for handling disruptive students. The institutes shall be conducted during the summer of 2000. The training institutes shall emphasize methods for handling disruptions in regular classrooms and how to design and

implement alternative learning settings and programs that have been proven to be effective in providing for the educational needs of students who exhibit frequent and prolonged disruptive behavior when placed in a regular classroom setting.

(2) The superintendent may enter into contracts with public or private entities that provide training in effective research-based methods for dealing with disruptive students. In developing the institutes, the superintendent shall work with school staff who have had experience working effectively with disruptive students. The institutes shall be open to teams of teachers, principals, and other school staff from each school district choosing to participate. However, as a condition of participating in the institutes, school district teams shall be required to develop during or immediately following the institute a district plan for carrying out the purposes of this section. Elementary schools and junior high and middle schools in districts that send teams to participate in institutes conducted under this section are encouraged to formulate school building-level plans for addressing the educational needs of disruptive students and the needs of students and teachers in the regular classrooms for an orderly and disciplined environment that is optimally conducive to learning. Individual participants in the institutes shall agree to provide assistance as needed to other school staff in their school building or school district, consistent with their other normal duties.

(3) Beginning with the 1999-2000 school year, elementary and junior high schools are encouraged to provide staff from both the regular education and special education programs opportunities to work together to share successful practices for managing disruptive students.

Passed the House April 20, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 167

[Substitute Senate Bill 5214]

MINORS POSSESSING FIREARMS ON SCHOOL FACILITIES—MENTAL HEALTH EVALUATION

AN ACT Relating to detention of minors who illegally possess firearms on school facilities; amending RCW 9.41.280, 13.40.040, and 28A.600.230; and creating a new section.

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

Sec. 1. RCW 9.41.280 and 1996 c 295 s 13 are each amended to read as follows:

(1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm;

(b) Any other dangerous weapon as defined in RCW 9.41.250;

(c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means;

(d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect; or

(e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas.

(2) Any such person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall have his or her concealed pistol license, if any revoked for a period of three years. Anyone convicted under this subsection is prohibited from applying for a concealed pistol license for a period of three years. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section, the person shall be detained or confined in a juvenile or adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the county-designated mental health professional unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail.

Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the county-designated mental health professional for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The county-designated mental health professional shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

The county-designated mental health professional may determine whether to refer the person to the county-designated chemical dependency specialist for examination and evaluation in accordance with chapter 70.96A RCW. The county-designated chemical dependency specialist shall examine the person subject to the provisions of chapter 70.96A RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

Upon completion of any examination by the county-designated mental health professional or the county-designated chemical dependency specialist, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person.

The county-designated mental health professional and county-designated chemical dependency specialist shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined.

If the county-designated mental health professional determines it is appropriate, the county-designated mental health professional may refer the person to the local regional support network for follow-up services or the department of social and health services or other community providers for other services to the family and individual.

(3) Subsection (1) of this section does not apply to:

(a) Any student or employee of a private military academy when on the property of the academy;

(b) Any person engaged in military, law enforcement, or school district security activities;

(c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;

(d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1)(c) and (d) of this section do not apply to any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises.

(5) Except as provided in subsection (3)(b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(6) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds.

Sec. 2. RCW 13.40.040 and 1997 c 338 s 13 are each amended to read as follows:

(1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(3) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(4) Except as provided in RCW 9.41.280, a juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the

juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of social and health services. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping.

Sec. 3. RCW 28A.600.230 and 1989 c 271 s 246 are each amended to read as follows:

(1) A school principal, vice principal, or principal's designee may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's designee has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules. A search is mandatory if there are reasonable grounds to suspect a student has illegally possessed a firearm in violation of RCW 9.41.280.

(2) Except as provided in subsection (3) of this section, the scope of the search is proper if the search is conducted as follows:

(a) The methods used are reasonably related to the objectives of the search; and

(b) Is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

(3) A principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search as those terms are defined in RCW 10.79.070.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, this act is null and void.

Passed the Senate April 20, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 168

[Second Substitute Senate Bill 5108]

MISSING AND EXPLOITED CHILDREN—TASK FORCE

AN ACT Relating to missing and exploited children; adding new sections to chapter 13.60 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds a compelling need to address the problem of missing children, whether those children have been abducted by a stranger, are missing due to custodial interference, or are classified as runaways. Washington state ranks twelfth in the nation for active cases of missing juveniles and, at any given time, more than one thousand eight hundred Washington children

are reported as missing. The potential for physical and psychological trauma to these children is extreme. Therefore, the legislature finds that it is paramount for the safety of these children that there be a concerted effort to resolve cases of missing and exploited children.

Due to the complexity of many child abduction cases, most law enforcement personnel are unprepared and lack adequate resources to successfully and efficiently investigate these crimes. Therefore, it is the intent of the legislature that a multiagency task force be established within the Washington state patrol, to be available to assist local jurisdictions in missing child cases through referrals, on-site assistance, case management, and training. The legislature intends that the task force will increase the effectiveness of a specific case investigation by drawing from the combined resources, knowledge, and technical expertise of the members of the task force.

NEW SECTION. Sec. 2. (1) A task force on missing and exploited children is established in the Washington state patrol. The task force shall be under the direction of the chief of the state patrol.

(2) The task force is authorized to assist law enforcement agencies, upon request, in cases involving missing or exploited children by:

(a) Direct assistance and case management;

(b) Technical assistance;

(c) Personnel training;

(d) Referral for assistance from local, state, national, and international agencies; and

(e) Coordination and information sharing among local, state, interstate, and federal law enforcement and social service agencies.

(3) To maximize the efficiency and effectiveness of state resources and to improve interagency cooperation, the task force shall, where feasible, use existing facilities, systems, and staff made available by the state patrol and other local, state, interstate, and federal law enforcement and social service agencies. The chief of the state patrol may employ such additional personnel as are necessary for the work of the task force and may share personnel costs with other agencies.

(4) The chief of the state patrol shall seek public and private grants and gifts to support the work of the task force.

(5) By December 1, 2001, and annually thereafter, the chief of the state patrol shall submit a report to the appropriate committees of the legislature. The report shall establish performance measurements and objectives for the task force and assess the accomplishments of the task force.

(6) For the purposes of sections 1 through 3 of this act, "exploited children" means children under the age of eighteen who are employed, used, persuaded, induced, enticed, or coerced to engage in, or assist another person to engage in, sexually explicit conduct. "Exploited children" also means the rape, molestation, or use for prostitution of children under the age of eighteen.

NEW SECTION. Sec. 3. The advisory board on missing and exploited children is established to advise the chief of the Washington state patrol on the objectives, conduct, management, and coordination of the various activities of the task force on missing and exploited children.

(1) The chief of the state patrol shall appoint five members to the advisory board: (a) One member shall be a county prosecuting attorney or a representative and shall be appointed in consultation with the elected county prosecutors; (b) two members shall be a municipal police chief and a county sheriff, or their representatives, and shall be appointed in consultation with the association of sheriffs and police chiefs under RCW 36.28A.010; (c) one member shall be a representative of the state patrol; and (d) one member shall be a representative of parents of missing or exploited children.

(2) A sixth member of the board shall represent and be appointed by the attorney general.

(3) To improve interagency communication and coordination, the chief of the state patrol shall invite representatives of federal law enforcement agencies and state social service agencies to participate in the advisory board.

(4) The members of the board shall be qualified on the basis of knowledge and experience as may contribute to the effective performance of the board's duties. The board shall elect its own chair from among its members. Meetings of the board may be convened at the call of the chair or by a majority of the members.

(5) The term of each member of the board shall be two years and shall be conditioned upon the member retaining the official position from which the member was appointed.

NEW SECTION. Sec. 4. This act may be known and cited as the Teekah Lewis act.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 6. Sections 1 through 3 of this act are each added to chapter 13.60 RCW.

Passed the Senate April 20, 1999.

Passed the House April 15, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 169

[Substitute House Bill 1013]

WASHINGTON FUND FOR INNOVATION AND QUALITY IN HIGHER EDUCATION

AN ACT Relating to the Washington fund for innovation and quality in higher education program; amending RCW 28B.120.005, 28B.120.020, 28B.120.010, 28B.120.030, and 28B.120.040; adding new sections to chapter 28B.120 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to update and fund the higher education competitive grant program established by the 1991 legislature, known as the Washington fund for innovation and quality in higher education. Changes are needed so that the goals and priorities set forth for awarding grants reflect the 1999-01 goals and priorities. The legislature also intends to improve the administration of the program by separating responsibilities between the higher education coordinating board and the state board for community and technical colleges.

Sec. 2. RCW 28B.120.005 and 1991 c 98 s 1 are each amended to read as follows:

The legislature finds that encouraging collaboration among the various educational sectors to meet state-wide needs will strengthen the entire educational system, kindergarten through twelfth grade and higher education. The legislature also recognizes that the most effective way to develop innovative and collaborative programs is to encourage institutions to develop them voluntarily, in line with established state goals. Through a system of competitive grants, the legislature shall encourage the development of innovative and collaborative solutions to issues of critical state-wide need, including:

(1) ~~((Improving rates of participation and completion at each educational level; —(2)))~~ Recognizing needs of special populations of students;

~~((3) Improving the effectiveness of education by better coordinating communication and understanding between sectors;))~~

(2) Furthering the development of learner-centered, technology-assisted course delivery;

(3) Furthering the development of competency-based measurements of student achievement to be used as the basis for awarding degrees and certificates; and

(4) Increasing the collaboration among both public and private sector institutions of higher education.

Sec. 3. RCW 28B.120.020 and 1996 c 41 s 2 are each amended to read as follows:

The higher education coordinating board shall have the following powers and duties in administering the program for those proposals in which a four-year institution of higher education is named as the lead institution and fiscal agent:

(1) To adopt rules necessary to carry out the program;

(2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities and shall include representatives from both the four-year and two-year sectors of higher education;

(3) To award grants no later than September 1st in those years when funding is available by June 30th;

(4) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program and consistent with the guidelines established by the state board for community and technical colleges under section 4 of this act. During the ~~((1995-97))~~ 1999-01 biennium the guidelines shall be consistent with the following desired outcomes of ~~((increasing access, improving time to degree, improving student learning, and increasing efficiency and collaboration between institutions of higher education and the private sector through projects that may emphasize))~~:

(a) Minority and diversity initiatives that encourage the participation of minorities in higher education, including students with disabilities ~~((at a rate consistent with their proportion of the population))~~;

(b) K-12 teacher preparation models that encourage collaboration between higher education and K-12 to improve the preparedness of teachers, including provisions for higher education faculty involved with teacher preparation to spend time teaching in K-12 schools;

(c) ~~((Multi-institutional or multifaculty development and evaluation of: —(i)) Collaborative instructional programs involving K-12, community and technical colleges, and four-year institutions of higher education to develop a three-year degree program, or reduce the time to degree;~~

~~((ii) Instructional technology and multimedia curricular projects; and —(iii) A degree offered entirely on the internet;~~

~~(d) Individual institutional or faculty pilot projects to:~~

~~(i) Improve efficiency by five percent per year in cost or graduation rate;~~

~~(ii) Improve student retention;~~

~~(iii) Develop competencies and outcomes for general education or university requirements and degree programs;~~

~~(iv)) (d) Contracts with public or private institutions or businesses to provide services or the development of collaborative programs;~~

(e) Articulation and transfer activities to smooth the transfer of students from K-12 to higher education, or from the community colleges and technical colleges to four-year institutions; ~~((and))~~

(f) ~~((Other innovative proposals))~~ Projects that further the development of learner-centered, technology-assisted course delivery; and

(g) Projects that further the development of competency-based measurements of student achievement to be used as the basis for awarding degrees and certificates.

After June 30, ~~((1996))~~ 2001, and each biennium thereafter, the board shall determine funding priorities for collaborative proposals for the biennium in consultation with the governor, the legislature, the office of the superintendent of public instruction, the state board for community and technical colleges, the work force training and education coordinating board, higher education institutions, educational associations, and business and community groups consistent with state-wide needs;

~~((4))~~ (5) To solicit grant proposals and provide information to the institutions of higher education about the program; and

~~((5))~~ (6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants awarded by the higher education coordinating board.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.120 RCW to read as follows:

The state board for community and technical colleges has the following powers and duties in administering the program for those proposals in which a community or technical college is named as the lead institution and fiscal agent:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities and shall include representatives from both the four-year and two-year sectors of higher education;
- (3) To award grants no later than September 1st in those years when funding is available by June 30th;
- (4) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program and consistent with the guidelines established by the higher education coordinating board under RCW 28B.120.020. During the 1999-01 biennium the guidelines shall be consistent with the following desired outcomes of:
 - (a) Minority and diversity initiatives that encourage the participation of minorities in higher education, including students with disabilities;
 - (b) K-12 teacher preparation models that encourage collaboration between higher education and K-12 to improve the preparedness of teachers, including provisions for higher education faculty involved with teacher preparation to spend time teaching in K-12 schools;
 - (c) Collaborative instructional programs involving K-12, community and technical colleges, and four-year institutions of higher education to develop a three-year degree program, or reduce the time to degree;
 - (d) Contracts with public or private institutions or businesses to provide services or the development of collaborative programs;
 - (e) Articulation and transfer activities to smooth the transfer of students from K-12 to higher education, or from the community colleges and technical colleges to four-year institutions;
 - (f) Projects that further the development of learner-centered, technology-assisted course delivery; and
 - (g) Projects that further the development of competency-based measurements of student achievement to be used as the basis for awarding degrees and certificates;

(5) To solicit grant proposals and provide information to the community and technical colleges and private career schools; and

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants awarded by the state board for community and technical colleges.

Sec. 5. RCW 28B.120.010 and 1996 c 41 s 1 are each amended to read as follows:

The Washington fund for innovation and quality in higher education program is established. The higher education coordinating board shall administer the program for the purpose of awarding grants in which a four-year institution of higher education is named as the lead institution. The state board for community and technical colleges shall administer the program for the purpose of awarding grants in which a community or technical college is named as the lead institution. Through this program the boards may award on a competitive basis incentive grants to state public institutions of higher education or consortia of institutions to encourage cooperative programs designed to address specific system problems. Grants shall not exceed a two-year period. Each institution or consortia of institutions receiving the award shall contribute some financial support, either by covering part of the costs for the program during its implementation, or by assuming continuing support at the end of the grant period. Strong priority will be given to proposals that involve more than one sector of education, and to proposals that show substantive institutional commitment. Institutions are encouraged to solicit nonstate funds to support these cooperative programs.

Sec. 6. RCW 28B.120.030 and 1991 c 98 s 4 are each amended to read as follows:

The higher education coordinating board and the state board for community and technical colleges may solicit and receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program and may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

Sec. 7. RCW 28B.120.040 and 1996 c 41 s 3 are each amended to read as follows:

The higher education coordinating board fund for innovation and quality is hereby established in the custody of the state treasurer. The higher education coordinating board shall deposit in the fund all moneys received under RCW 28B.120.030. Moneys in the fund may be spent only for the purposes of RCW 28B.120.010 and 28B.120.020. Disbursements from the fund shall be on the authorization of the higher education coordinating board. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

NEW SECTION. **Sec. 8.** A new section is added to chapter 28B.120 RCW to read as follows:

The community and technical college fund for innovation and quality is hereby established in the custody of the state treasurer. The state board for community and technical colleges shall deposit in the fund all moneys received under RCW 28B.120.030. Moneys in the fund may be spent only for the purposes of RCW 28B.120.010 and section 4 of this act. Disbursements from the fund shall be on the authorization of the state board for community and technical colleges. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

Passed the House March 12, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 170

[House Bill 1199]

CIVIL ANTIHARASSMENT ACTIONS—SUPERIOR COURT JURISDICTION

AN ACT Relating to jurisdiction of superior courts in civil antiharassment actions; and amending RCW 10.14.150.

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

Sec. 1. RCW 10.14.150 and 1991 c 33 s 2 are each amended to read as follows:

(1) The district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(2) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district court judge makes findings of fact and conclusions of law showing that meritorious reasons (~~(exit{exist})~~) exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170.

Passed the House March 5, 1999.

Passed the Senate April 9, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 171

[Substitute House Bill 1224]

WORKER FALL PROTECTION—PERMANENT ANCHORS

AN ACT Relating to requiring a permanent anchor for worker fall protection; and adding a new section to chapter 19.27 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 19.27 RCW to read as follows:

By October 1, 1999, the building code council shall prepare a report to the legislature documenting the need, including safety benefits, for requiring the installation of permanent anchors for fall protection on all new commercial and residential construction and when a roof is replaced on existing commercial and residential structures. The report shall contain recommendations on the best design and placement of such anchors.

Passed the House March 10, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 172

[Substitute House Bill 1371]

TUBERCULOSIS—REPORTING AND TREATMENT

AN ACT Relating to reporting, treatment, and payment for treatment of tuberculosis; amending RCW 70.28.010, 70.28.020, 70.28.037, 70.30.061, 70.32.010, 70.33.010, 70.33.020, and 70.33.040; adding new sections to chapter 70.30 RCW; adding new sections to chapter 70.28 RCW; creating a new section; recodifying RCW 70.33.010, 70.33.020, 70.32.010, and 70.33.040; and repealing RCW 70.28.040, 70.28.050, 70.30.072, 70.32.050, 70.32.060, 70.33.030, and 70.33.060.

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

NEW SECTION. **Sec. 1.** The legislature finds that current statutes relating to the reporting, treatment, and payment for tuberculosis are outdated, and not in concert with current clinical practice and tuberculosis care management. Updating reporting requirements for local health departments will benefit providers, local health, and individuals requiring treatment for tuberculosis.

Sec. 2. RCW 70.28.010 and 1996 c 209 s 1 are each amended to read as follows:

All practicing ~~((physicians))~~ health care providers in the state are hereby required to report to the local ~~((boards of))~~ health ~~((in writing, the name, age, sex, occupation and residence))~~ department cases of every person having tuberculosis who has been attended by, or who has come under the observation of ~~((such physician)),~~ the health care provider within one day thereof.

Sec. 3. RCW 70.28.020 and 1967 c 54 s 2 are each amended to read as follows:

All local ~~((boards of))~~ health departments in this state are hereby required to receive and keep a ~~((permanent))~~ record, for a period of ten years from the date of the report, of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper

inspection of other local health departments and ~~((state boards))~~ of the department of health alone, and such records shall not be published nor made public.

Sec. 4. RCW 70.28.037 and 1967 c 54 s 7 are each amended to read as follows:

Where it has been determined after an examination as prescribed ~~((above;))~~ in this chapter that an individual has active tuberculosis, ~~((and he resides in a county in which no tuberculosis facility is located;))~~ upon application to the superior court by the local health officer, the superior court ~~((may))~~ shall order the sheriff to transport ~~((said))~~ the individual to a designated ~~((tuberculosis))~~ facility for isolation, treatment, and care until such time as the ~~((medical director of the hospital))~~ local health officer or designee determines that ~~((his))~~ the patient's condition is such that it is safe for ~~((him))~~ the patient to be discharged from the facility.

Sec. 5. RCW 70.30.061 and 1973 1st ex.s. c 213 s 1 are each amended to read as follows:

Any person residing in the state and needing treatment for tuberculosis~~((;))~~ may apply in person to the local health officer or to any licensed physician, advanced registered nurse practitioner, or licensed physician assistant for examination and if ~~((such physician))~~ that health care provider has reasonable cause to believe that ~~((said))~~ the person is suffering from tuberculosis in any form he or she may apply to the local health officer or ~~((tuberculosis hospital director))~~ designee for admission of ~~((said))~~ the person to an appropriate facility for the care and treatment of tuberculosis.

Sec. 6. RCW 70.32.010 and 1975 1st ex.s. c 291 s 3 are each amended to read as follows:

Tuberculosis is a communicable disease and tuberculosis ~~((control, case finding;))~~ prevention, treatment, control, and follow up of known cases of tuberculosis ~~((represents))~~ are the basic steps in the ~~((conquest))~~ control of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary ~~((pursuant to))~~ under RCW 70.33.020 (as recodified by this act), the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention, treatment, and follow up of known cases of tuberculosis. Under no circumstances should this section be construed to mean that the legislative authority of each county shall budget sums to provide tuberculosis treatment when the patient has the ability to pay for the treatment. Each patient's ability to pay for the treatment shall be assessed by the local health department.

Sec. 7. RCW 70.33.010 and 1991 c 3 s 330 are each amended to read as follows:

The ((following words and phrases shall have the designated meanings in)) definitions in this section apply throughout this chapter ((and RCW 70.32.010;

~~70.32.050, and 70.32.060~~) unless the context clearly ~~((indicated))~~ requires otherwise:

- (1) "Department" means the department of health;
- (2) "Secretary" means the secretary of the department of health or his or her designee;
- (3) ~~((("Tuberculosis hospital" and "tuberculosis hospital facility" refer to hospitals for the care of persons suffering from tuberculosis;~~
- ~~—(4))~~ "Tuberculosis control" refers to the procedures administered in the counties for the control ~~((and)),~~ prevention, and treatment of tuberculosis~~((, but does not include hospitalization)).~~

Sec. 8. RCW 70.33.020 and 1983 c 3 s 172 are each amended to read as follows:

~~((From and after August 9, 1971,))~~ The secretary shall have responsibility for establishing standards for the control, prevention, and treatment of tuberculosis and ~~((shall have administrative responsibility and control for all tuberculosis))~~ hospitals (facilities) approved to treat tuberculosis in the state operated ~~((pursuant to))~~ under this chapter and chapter 70.30 RCW ((70.32.010, 70.32.050, and 70.32.060)) and for providing, either directly or through agreement, contract, or purchase, ~~((hospital, nursing home and other))~~ appropriate facilities and services ~~((including laboratory services))~~ for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061~~((, 70.33.020, 70.33.030, and 70.33.040))~~ or this section.

~~((Pursuant to))~~ Under that responsibility, the secretary shall have the following powers and duties:

- (1) To develop and enter into such agreements, contracts, or purchase arrangements with counties and public and private agencies or institutions to provide for hospitalization, nursing home, or other appropriate facilities and services, including laboratory services, for persons who are or may be suffering from tuberculosis~~((, or to provide for and maintain any tuberculosis hospital facility which the secretary determines is necessary to meet the needs of the state, to determine where such hospitals shall be located and to adequately staff such hospitals to meet patient care needs));~~

- (2) ~~((To appoint a medical director for each tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, and 70.32.060;~~
- ~~—(3))~~ Adopt such rules ~~((and regulations))~~ as are necessary to assure effective patient care and treatment~~((, and to provide for the general administration))~~ of tuberculosis ~~((hospital facilities operated pursuant to this chapter and RCW 70.32.010, 70.32.050, and 70.32.060)).~~

Sec. 9. RCW 70.33.040 and 1975 1st ex.s. c 291 s 4 are each amended to read as follows:

In order to maintain adequate ~~((tuberculosis hospital facilities and to provide for adequate hospitalization, nursing home and other appropriate))~~ facilities and services for the residents of the state of Washington who are or may be suffering

from tuberculosis and to assure their proper care, ~~((the standards set by the secretary pursuant to RCW 70.33.020 and 70.32.050 and 70.32.060,))~~ the legislative authority of each county shall budget annually a sum to provide such services in the county.

~~((If such counties desire to receive state services, they may elect to utilize funds pursuant to this section for the purpose of contracting with the state upon agreement by the state for the cost of providing tuberculosis hospitalization and/or outpatient treatment including laboratory services, or such))~~ The funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis ~~((or any other community health purposes authorized by law))~~. None of ~~((such))~~ the counties shall be required to make any payments to the state or any other agency from these funds except ~~((upon the express consent of the county legislative authority: PROVIDED, That))~~ as authorized by the local health department. However, if the counties do not comply with the ~~((promulgated))~~ adopted standards of the department, the secretary shall take action to provide ~~((such))~~ the required services and to charge the affected county directly for the provision of these services by the state.

NEW SECTION. **Sec. 10.** A new section is added to chapter 70.30 RCW to read as follows:

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

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

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis.

NEW SECTION. **Sec. 11.** (1) RCW 70.33.010 and 70.33.020 are each recodified as sections in chapter 70.28 RCW.

(2) RCW 70.32.010 and 70.33.040 are each recodified as sections in chapter 70.30 RCW.

NEW SECTION. **Sec. 12.** The following acts or parts of acts are each repealed:

(1) RCW 70.28.040 and 1899 c 71 s 4;

(2) RCW 70.28.050 and 1967 c 54 s 3 & 1899 c 71 s 5;

(3) RCW 70.30.072 and 1972 ex.s. c 143 s 3;

(4) RCW 70.32.050 and 1971 ex.s. c 277 s 22, 1967 c 54 s 16, 1945 c 66 s 5, & 1943 c 162 s 5;

(5) RCW 70.32.060 and 1971 ex.s. c 277 s 23, 1967 c 54 s 17, 1945 c 66 s 6, & 1943 c 162 s 6;

(6) RCW 70.33.030 and 1983 c 3 s 173, 1973 1st ex.s. c 213 s 3, & 1971 ex.s. c 277 s 17; and

(7) RCW 70.33.060 and 1971 ex.s. c 277 s 20.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 19, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 173

[Engrossed Substitute House Bill 1407]

ADOPTION—TERMINATION OF PARENT-CHILD RELATIONSHIP

AN ACT Relating to adoption; amending RCW 26.33.170; reenacting and amending RCW 13.34.130; and adding a new section to chapter 13.34 RCW.

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

Sec. 1. RCW 26.33.170 and 1988 c 203 s 1 are each amended to read as follows:

(1) An agency's, the department's, or a legal guardian's consent to adoption may be dispensed with if the court determines by clear, cogent and convincing evidence that the proposed adoption is in the best interests of the adoptee.

(2) An alleged father's, birth parent's, or parent's consent to adoption may be dispensed with if the court finds that the proposed adoption is in the best interests of the adoptee and:

(a) The alleged father, birth parent, or parent has been found guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020, where the adoptee was the victim of the rape or incest; or

(b) The alleged father, birth parent, or parent has been found guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020, where the other parent of the adoptee was the victim of the rape or incest and the adoptee was conceived as a result of the rape or incest.

(3) Nothing in this section shall be construed to eliminate the notice provisions of this chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

In those cases where an alleged father, birth parent, or parent has indicated his or her intention to make a voluntary adoption plan for the child and has agreed to the termination of his or her parental rights, the department shall follow the wishes of the alleged father, birth parent, or parent regarding the proposed adoptive placement of the child, if the court determines that the adoption is in the best interest of the child, and the prospective adoptive parents chosen by the alleged father, birth parent, or parent are properly qualified to adopt in compliance with the standards in this chapter and chapter 26.33 RCW. If the department has filed a termination petition, an alleged father's, birth parent's, or parent's preferences

regarding the proposed adoptive placement of the child shall be given consideration.

Sec. 3. RCW 13.34.130 and 1998 c 314 s 2 and 1998 c 130 s 2 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is related to the child as defined in RCW 74.15.020(~~(4)(a))~~) (2)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds: (a) Termination is recommended by the supervising agency; (b) termination is in the best interests of the child; and (c) that because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interest of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

(i) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(ii) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(iii) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(iv) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(v) Conviction of the parent of attempting, soliciting, or conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of this subsection;

(vi) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(vii) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. (~~(1903)~~) Sec. 1903), the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(viii) An infant under three years of age has been abandoned as defined in RCW 13.34.030(4)(a);

(ix) The mother has given birth to three or more drug-affected infants, resulting in the department filing a petition under section 23 of this act;

(x) Conviction of the parent of a sex offense under chapter 9A.44 RCW or incest under RCW 9A.64.020 when the child is born of the offense.

(3) If reasonable efforts are not ordered under subsection (2) of this section a permanency (~~(plan [planning])~~) planning hearing shall be held within thirty days.

Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

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

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

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

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(7) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have

made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

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 April 20, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 174

[Engrossed Substitute House Bill 1514]

PARENTING PLANS—MODIFICATIONS TO RESIDENTIAL SCHEDULES

AN ACT Relating to modification of a parenting plan or custody decree; and amending RCW 26.09.260.

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

Sec. 1. RCW 26.09.260 and 1991 c 367 s 9 are each amended to read as follows:

(1) Except as otherwise provided in subsections (4), (5), (7), and (9) of this section, the court shall not modify a prior custody decree or a parenting plan unless

it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

- (a) The parents agree to the modification;
- (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;
- (c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
- (d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the nonprimary residential parent and a child if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a(~~(~~

- ~~—(a) Modification in the dispute resolution process; or~~
- ~~—(b) Minor modification in the residential schedule that:~~
 - ~~(i) Does not change the residence the child is scheduled to reside in the majority of the time; and~~
 - ~~(ii) Does not exceed twenty-four full days in a calendar year or five full days in a calendar month; or~~
 - ~~(iii) Is based on a change of residence or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow))~~ minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and;

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that the decree of dissolution or parenting plan does not provide reasonable time with the nonprimary residential parent at the time the petition for modification is filed, and further, the court finds that it is in the best interests of the child to increase residential time with the nonprimary residential parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the motion has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) A nonprimary residential parent whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(7) If a nonprimary residential parent voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(8) A nonprimary parent who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(9) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

~~((5))~~ (10) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

Passed the House April 19, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 175

[Second Substitute House Bill 1546]

IN-HOME CARE SERVICES—PLAN OF CARE

AN ACT Relating to in-home care services; amending RCW 74.39A.090; adding a new section to chapter 74.39A RCW; and creating new sections.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that the quality of long-term care services provided to, and protection of, Washington's low-income elderly and disabled residents is of great importance to the state. The legislature further finds that revised in-home care policies are needed to more effectively address concerns about the quality of these services.

(2) The legislature finds that consumers of in-home care services frequently are in contact with multiple health and long-term care providers in the public and private sector. The legislature further finds that better coordination between these health and long-term care providers, and case managers, can increase the consumer's understanding of their plan of care, maximize the health benefits of coordinated care, and facilitate cost efficiencies across health and long-term care systems.

Sec. 2. RCW 74.39A.090 and 1995 1st sp.s. c 18 s 38 are each amended to read as follows:

(1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to ~~((individuals))~~ consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for ~~((individuals))~~ consumers consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract to provide these services, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring must be expanded to include, but is not limited to, assessing the degree and quality

of the case management performed by area agency on aging staff for elderly and disabled persons in the community.

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under section 3 of this act has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in section 3 of this act. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care.

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

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide adequate oversight of the care being provided to consumers receiving services under this section. Such oversight shall include, but is not limited to:

- (a) Verification that the individual provider has met any training requirements established by the department;
- (b) Verification of a sample of worker time sheets;
- (c) Home visits or telephone contacts sufficient to ensure that the plan of care is being appropriately implemented;
- (d) Reassessment and reauthorization of services;
- (e) Monitoring of individual provider performance; and
- (f) Conducting criminal background checks or verifying that criminal background checks have been conducted.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

- (a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement that the individual provider has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW.

(8) The area agency on aging may reject a request by an consumer receiving services under this section to have a family member serve as his or her individual

provider if the case manager has a reasonable, good faith belief that the family member will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, this act is null and void.

Passed the House March 12, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 176

[Substitute House Bill 1620]

VULNERABLE ADULTS—PROTECTIVE SERVICES

AN ACT Relating to protection of vulnerable adults; amending RCW 74.34.020, 74.34.025, 74.34.050, 74.34.070, 74.34.080, 74.34.110, 74.34.130, 74.34.180, 74.34.200, 70.124.010, 70.124.020, 70.124.030, 70.124.060, 70.124.090, 70.124.100, 26.44.010, 26.44.015, 26.44.020, 26.44.030, 26.44.032, 26.44.040, and 74.39A.060; reenacting and amending RCW 70.124.040 and 26.44.050; adding new sections to chapter 74.34 RCW; creating new sections; and repealing RCW 74.34.010, 74.34.015, 74.34.030, 74.34.055, and 74.34.060.

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

NEW SECTION. Sec. 1. The legislature finds that the provisions for the protection of vulnerable adults found in chapters 26.44, 70.124, and 74.34 RCW contain different definitions for abandonment, abuse, exploitation, and neglect. The legislature finds that combining the sections of these chapters that pertain to the protection of vulnerable adults would better serve this state's population of vulnerable adults. The purpose of chapter 74.34 RCW is to provide the department and law enforcement agencies with the authority to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and legal remedies to protect these vulnerable adults.

NEW SECTION. Sec. 2. A new section is added to chapter 74.34 RCW to read as follows:

The legislature finds and declares that:

- (1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;
- (2) A vulnerable adult may be home bound or otherwise unable to represent himself or herself in court or to retain legal counsel in order to obtain the relief available under this chapter or other protections offered through the courts;
- (3) A vulnerable adult may lack the ability to perform or obtain those services necessary to maintain his or her well-being because he or she lacks the capacity for consent;

(4) A vulnerable adult may have health problems that place him or her in a dependent position;

(5) The department and appropriate agencies must be prepared to receive reports of abandonment, abuse, financial exploitation, or neglect of vulnerable adults;

(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.

Sec. 3. RCW 74.34.020 and 1997 c 392 s 523 are each amended to read as follows:

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a ~~((frail elder or a))~~ vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means ~~((a nonaccidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual))~~ the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that

is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the ((person)) vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) ~~("Exploitation" means the illegal or improper use of a frail elder or vulnerable adult or that person's income or resources, including trust funds, for another person's profit or advantage:~~

~~— (6) "Neglect" means a pattern of conduct or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that results in the deprivation of care necessary to maintain the vulnerable person's physical or mental health:~~

~~— (7) "Secretary" means the secretary of social and health services.~~

~~— (8) "Frail elder or 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. "Frail elder or vulnerable adult" shall include persons found incapacitated under chapter 11.88 RCW, or a person who has a developmental disability under chapter 71A.10 RCW, and persons admitted to any long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or persons receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW.~~

~~— (9) No frail elder or vulnerable person who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected.))~~ "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

(7) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(8) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(9) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that avoids or prevents physical or mental

harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety.

(10) "Permissive reporter" means any person, employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(11) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(12) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(13) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020;

or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider.

Sec. 4. RCW 74.34.025 and 1997 c 392 s 304 are each amended to read as follows:

The cost of benefits and services provided to a (~~(frail-elder-or)~~) vulnerable adult under this chapter with state funds only does not constitute an obligation or lien and is not recoverable from the recipient of the services or from the recipient's estate, whether by lien, adjustment, or any other means of recovery.

NEW SECTION. Sec. 5. A new section is added to chapter 74.34 RCW to read as follows:

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department. If there is reason to suspect that sexual or physical assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(2) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(3) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(4) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(5) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

Sec. 6. RCW 74.34.050 and 1997 c 386 s 34 are each amended to read as follows:

(1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, ~~((or))~~ financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in ~~((RCW 74.34.030))~~ this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report ~~((under RCW 74.34.030))~~ as allowed under this chapter.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW.

NEW SECTION. **Sec. 7.** A new section is added to chapter 74.34 RCW to read as follows:

(1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor.

NEW SECTION. Sec. 8. A new section is added to chapter 74.34 RCW to read as follows:

(1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, 42.17.310, and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult.

NEW SECTION. Sec. 9. A new section is added to chapter 74.34 RCW to read as follows:

(1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to

reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department determines that the vulnerable adult has suffered from abuse, neglect, self-neglect, abandonment, or financial exploitation, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW as an interested person.

(6) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(7) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(8) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants.

Sec. 10. RCW 74.34.070 and 1997 c 386 s 35 are each amended to read as follows:

~~((In responding to reports of alleged abuse, exploitation, neglect, or abandonment under this chapter, the department shall provide information to the frail elder or vulnerable adult on protective services available to the person and inform the person of the right to refuse such services.))~~ The department ~~((shall))~~ may develop cooperative agreements with community-based agencies ~~((servicing the abused elderly and))~~ providing services for vulnerable adults. The agreements shall cover ~~((such subjects as))~~; (1) The appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of alleged abuse~~((:));~~; (2) the provision of case-management services~~((:));~~; (3) standardized data collection procedures~~((:));~~; and (4) related coordination activities.

Sec. 11. RCW 74.34.080 and 1984 c 97 s 14 are each amended to read as follows:

If access is denied to an employee of the department seeking to investigate an allegation of abandonment, abuse, ~~((neglect;))~~ financial exploitation, or ~~((abandonment))~~ neglect of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

(1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abandoned, abused, ~~((neglected;))~~ financially exploited, or ~~((abandoned))~~ neglected; and

(2) The employee of the department seeking to investigate the report has been denied access.

Sec. 12. RCW 74.34.110 and 1986 c 187 s 5 are each amended to read as follows:

An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse ~~((or))~~, financial exploitation, or neglect is created.

(1) A vulnerable adult may seek relief from abandonment, abuse ~~((or))~~, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner is a vulnerable adult and that the petitioner has been abandoned, abused ~~((or))~~, financially exploited, or neglected, or is threatened with abandonment, abuse ~~((or))~~, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(5) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(6) An action under this section shall be filed in the county where the petitioner resides; except that if the petitioner has left the residence as a result of abandonment, abuse ~~((or))~~, financial exploitation, or neglect, or in order to avoid abandonment, abuse ~~((or))~~, financial exploitation, or neglect, the petitioner may bring an action in the county of either the previous or new residence.

(7) The filing fee for the petition may be waived at the discretion of the court.

Sec. 13. RCW 74.34.130 and 1986 c 187 s 7 are each amended to read as follows:

The court may order relief as it deems necessary for the protection of the petitioner, including, but not limited to the following:

(1) Restraining respondent from committing acts of abandonment, abuse ~~((or))~~, neglect, or financial exploitation;

(2) Excluding the respondent from petitioner's residence for a specified period or until further order of the court;

(3) Prohibiting contact by respondent for a specified period or until further order of the court;

(4) Requiring an accounting by respondent of the disposition of petitioner's income or other resources;

(5) Restraining the transfer of property for a specified period not exceeding ninety days;

(6) Requiring the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year.

Sec. 14. RCW 74.34.180 and 1997 c 392 s 202 are each amended to read as follows:

(1) An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department or the department of health about suspected abandonment, abuse, ~~((neglect,))~~ financial exploitation, or ~~((abandonment))~~ neglect by any person in a ~~((boarding home))~~ facility, licensed or required to be licensed ~~((pursuant to chapter 18.20 RCW or a veterans' home pursuant to chapter 72.36 RCW)),~~ or care provided in a ~~((boarding home or a veterans' home))~~ facility or in a home setting, by any person associated with a hospice, home care, or home health agency licensed under chapter 70.127 RCW or other in-home provider, may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to expel a resident from a ~~((boarding home or veterans' home))~~ facility, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or the department of health or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a ~~((functional assessment))~~ review conducted by the department that shows that the resident or consumer's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or a person with a mandatory duty to report under this chapter, or any person licensed under Title 18 RCW, who in good faith reports alleged ~~abandonment~~, abuse, ~~((neglect;))~~ financial exploitation, or ~~((abandonment))~~ neglect to the department, or the department of health, or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a ~~((nursing home, state hospital, boarding home, or adult family home))~~ facility or an agency licensed under chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (ii) for facilities licensed under chapter 70.128 RCW, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases in which a whistleblower has been terminated or had hours of employment reduced because of the inability of a facility to meet payroll; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a ~~((boarding home or veterans' home))~~ facility or an agency licensed under chapter 70.127 RCW from exercising its authority to terminate, suspend, or discipline any employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

~~((No frail elder or))~~ (a) Any vulnerable ((person)) adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination ~~((shall))~~ may not for that reason alone be considered abandoned, abused, or neglected ~~((; nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person))~~.

(b) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services.

(7) The department, and the department of health for facilities, agencies, or individuals it regulates, shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes.

Sec. 15. RCW 74.34.200 and 1995 1st sp.s. c 18 s 85 are each amended to read as follows:

(1) In addition to other remedies available under the law, a ~~((frail-elder-or))~~ vulnerable adult ~~((or-a-person-age-eighteen-or-older))~~ who has been subjected to abandonment, abuse, ~~((neglect,))~~ financial exploitation, or ~~((abandonment))~~ neglect either while residing in a ~~((long-term-care))~~ facility or in the case of a person ~~((in the))~~ residing at home who receives care ~~((of))~~ from a home health, hospice, or home care agency, ~~((residing-at-home))~~ or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a ~~((long-term-care))~~ facility, ~~((such-as-a-nursing-home-or-boarding-home-that-is-licensed-or-required-to-be-licensed-under-chapter-18.20, 18.51, 72.36, or 70.128-RCW,))~~ or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a ~~((frail-elder-or))~~ vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombudsman or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section.

NEW SECTION. **Sec. 16.** A new section is added to chapter 74.34 RCW to read as follows:

(1) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(2) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services.

NEW SECTION. Sec. 17. A new section is added to chapter 74.34 RCW to read as follows:

(1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombudsman programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper.

NEW SECTION. Sec. 18. A new section is added to chapter 74.34 RCW to read as follows:

The department may adopt rules relating to the reporting, investigation, and provision of protective services in in-home settings, consistent with the objectives of this chapter.

NEW SECTION. Sec. 19. The department of social and health services shall conduct a feasibility study to determine the need, use, role of due process, and cost of developing and maintaining a registry relating to incidents of abuse, neglect, abandonment, and financial exploitation of vulnerable adults. The results of the study are due by November 30, 1999.

Sec. 20. RCW 70.124.010 and 1981 c 174 s 1 are each amended to read as follows:

(1) The Washington state legislature finds and declares that a reporting system is needed to protect (~~nursing home and~~) state hospital patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to such patients have occurred, and in the instance where such a patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of the patients; and (b) such reports shall be

maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions.

Sec. 21. RCW 70.124.020 and 1997 c 392 s 519 are each amended to read as follows:

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

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery. The term "practitioner" (~~shall~~) includes a nurse's aide (~~(-a nursing home administrator licensed under chapter 18.52 RCW,))~~ and a duly accredited Christian Science practitioner (~~(-PROVIDED, HOWEVER, That a nursing home patient who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected patient for the purposes of this chapter))~~).

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

(5) (~~"Nursing home" has the meaning prescribed by RCW 18.51.010.~~

~~—(6))~~ (6) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of (~~(nursing home)~~) patients, or providing social services to (~~(nursing home)~~) patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

~~((7))~~ (6) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

~~((8))~~ (7) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

~~((9))~~ (8) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a (~~(nursing home or)~~) state hospital patient under circumstances which indicate that the patient's health, welfare, or safety is harmed thereby.

~~((10))~~ (9) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, or safety.

~~((11))~~ (10) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW.

Sec. 22. RCW 70.124.030 and 1981 c 174 s 3 are each amended to read as follows:

(1) When any practitioner, social worker, psychologist, pharmacist, ~~((employee of a nursing home;))~~ employee of a state hospital, or employee of the department has reasonable cause to believe that a ~~((nursing home or))~~ state hospital patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a ~~((nursing home or))~~ state hospital patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a ~~((nursing home or))~~ state hospital patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action.

Sec. 23. RCW 70.124.040 and 1997 c 392 s 520 and 1997 c 386 s 30 are each reenacted and amended to read as follows:

(1) Where a report is required under RCW 70.124.030, an immediate oral report ~~((shall))~~ must be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request, ~~((shall))~~ must be followed by a report in writing. The reports ~~((shall))~~ must contain the following information, if known:

- (a) The name and address of the person making the report;
- (b) The name and address of the ~~((nursing home or))~~ state hospital patient;
- (c) The name and address of the patient's relatives having responsibility for the patient;
- (d) The nature and extent of the alleged injury or injuries;
- (e) The nature and extent of the alleged neglect;
- (f) The nature and extent of the alleged sexual abuse;
- (g) Any evidence of previous injuries, including their nature and extent; and
- (h) Any other information ~~((which))~~ that may be helpful in establishing the cause of the patient's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department, and to other law enforcement agencies, including the medicaid fraud control unit of the office of the attorney general, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies ~~((shall))~~ must receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed.

Sec. 24. RCW 70.124.060 and 1993 c 510 s 25 are each amended to read as follows:

(1) A person other than a person alleged to have committed the abuse or neglect participating in good faith in the making of a report pursuant to this chapter, or testifying as to alleged patient abuse or neglect in a judicial proceeding, ~~((shall))~~ is, in so doing, ~~((be))~~ immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a ~~((nursing-home or))~~ state hospital it ~~((shall-be))~~ is an unfair practice under chapter 49.60 RCW for the employer to discharge, expel, or otherwise discriminate against the employee for such reporting activity.

(2) Conduct conforming with the reporting requirements of this chapter ~~((shall))~~ is not ~~((be-deemed))~~ a violation of the confidential communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter ~~((shall be construed as to))~~ supersedes or abridges remedies provided in chapter 4.92 RCW.

Sec. 25. RCW 70.124.090 and 1981 c 174 s 6 are each amended to read as follows:

In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to ~~((nursing-homes;))~~ state hospitals~~((, and nursing home))~~ and state hospital employees and the posting where appropriate by ~~((nursing-homes and))~~ state hospitals of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this chapter.

Sec. 26. RCW 70.124.100 and 1997 c 392 s 201 are each amended to read as follows:

(1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a ~~((nursing home;))~~ state hospital~~((, or adult family home))~~ may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to discharge a resident from a ~~((nursing-home;))~~ state hospital~~((, or adult family home;))~~ or any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint substantiated by the department has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the

institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a (~~nursing home,~~) state hospital(~~, or adult family home,~~) or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, financial exploitation, or abandonment to the department or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a (~~nursing home,~~) state hospital(~~, or adult family home~~) from exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a (~~nursing home,~~) state hospital(~~, or adult family home~~) from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) for facilities with six or fewer residents, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases where a whistleblower has been terminated or had hours of employment reduced due to the inability of a facility to meet payroll.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No (~~frail elder or vulnerable person~~) resident who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes.

Sec. 27. RCW 26.44.010 and 1987 c 206 s 1 are each amended to read as follows:

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER, That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

~~((Adult dependent or developmentally disabled persons not able to provide for their own protection through the criminal justice system shall also be afforded the protection offered children through the reporting and investigation requirements mandated in this chapter.))~~

Sec. 28. RCW 26.44.015 and 1997 c 386 s 23 are each amended to read as follows:

(1) This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, and safety.

(2) Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline.

(3) No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

~~((4) A person reporting alleged injury, abuse, or neglect to an adult dependent person shall not suffer negative consequences if the person reporting believes in good faith that the adult dependent person has been found legally incompetent or disabled.))~~

Sec. 29. RCW 26.44.020 and 1998 c 314 s 7 are each amended to read as follows:

~~((For the purpose of and as used in))~~ The definitions in this section apply throughout this chapter(4) unless the context clearly requires otherwise.

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" ~~((shall))~~ includes a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner ~~((shall))~~ will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

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

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" ~~((shall))~~ include, but are not ~~((be))~~ limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" ~~((shall))~~ means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" ~~((shall))~~ means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" ~~((shall))~~ means any registered pharmacist under ~~((the provisions of))~~ chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" ~~((shall))~~ means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" ~~((shall))~~ means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child~~((, adult dependent, or developmentally disabled person))~~ by any person under circumstances which indicate that the child's ~~((or adult's))~~ health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child

who has been subjected to child abuse or neglect as defined ~~((herein))~~ in this section.

(13) "Child protective services section" ~~((shall))~~ means the child protective services section of the department.

~~(14) ("Adult dependent persons" shall be defined as those persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW.~~

~~(15))~~ "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

~~((16))~~ (15) "Negligent treatment or maltreatment" means an act or omission ~~((which))~~ that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety. The fact that siblings share a bedroom is not, in and of itself, ~~((=))~~ negligent treatment or maltreatment. ~~((=~~

~~(17) "Developmentally disabled person" means a person who has a disability defined in RCW 71A.10.020.~~

~~(18))~~ (16) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions ~~((which))~~ that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

~~((19))~~ (17) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

~~((20))~~ (18) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a ~~((=))~~ sexually aggressive youth. ~~((=~~

~~(21))~~ (19) "Unfounded" means available information indicates that, more likely than not, child abuse or neglect did not occur.

Sec. 30. RCW 26.44.030 and I998 c 328 s 5 are each amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse,

social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child (~~(or adult dependent or developmentally disabled person,)~~) has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement (~~(shall)~~) also (apply) applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child (~~(or adult dependent or developmentally disabled person)~~) has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child (~~(or adult dependent or developmentally disabled person,)~~) who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report (~~(shall)~~) must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child (~~(or adult)~~) has suffered abuse or neglect. The report (~~(shall)~~) must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children(~~, dependent adults, or developmentally disabled persons~~) are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section (~~(shall)~~) does apply.

(3) Any other person who has reasonable cause to believe that a child (~~(or adult dependent or developmentally disabled person)~~) has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child (~~(or adult dependent or developmentally disabled person)~~) who has died or has had physical injury or

injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the ~~((child, adult dependent, or developmentally disabled person's))~~ child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report ~~((shall))~~ must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child ~~((or adult dependent or developmentally disabled person))~~ who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the ~~((child, adult dependent, or developmentally disabled person's))~~ child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services ~~((or department case services for the developmentally disabled))~~. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child ~~((or developmentally disabled person))~~. Information considered privileged by statute and not directly related to reports required by this section ~~((shall))~~ must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless

a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview ~~((shall))~~ must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the legislature on the effectiveness of the risk assessment process.

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral source^e to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate

confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral.

Sec. 31. RCW 26.44.032 and 1988 c 87 s 1 are each amended to read as follows:

In cases in which a public employee subject to RCW 26.44.030 acts in good faith and without gross negligence in his or her reporting duty, and if the employee's judgment as to what constitutes reasonable cause to believe that a child (~~((or adult dependent or developmentally disabled person))~~) has suffered abuse or neglect is being challenged, the public employer shall provide for the legal defense of the employee.

Sec. 32. RCW 26.44.040 and 1997 c 386 s 27 are each amended to read as follows:

An immediate oral report (~~((shall))~~) must be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, (~~((shall))~~) must be followed by a report in writing. Such reports (~~((shall))~~) must contain the following information, if known:

- (1) The name, address, and age of the child (~~((or adult dependent or developmentally disabled person))~~);
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child (~~((or the residence of the adult dependent or developmentally disabled person))~~);
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information (~~((which))~~) that may be helpful in establishing the cause of the child's (~~((or adult dependent or developmentally disabled person's))~~) death, injury, or injuries and the identity of the alleged perpetrator or perpetrators.

Sec. 33. RCW 26.44.050 and 1987 c 450 s 7 and 1987 c 206 s 5 are each reenacted and amended to read as follows:

Upon the receipt of a report concerning the possible occurrence of abuse or neglect, (~~((it shall be the duty of))~~) the law enforcement agency or the department of social and health services (~~((to))~~) must investigate and provide the protective services section with a report in accordance with (~~((the provision of))~~) chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused

or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child (~~or adult dependent or developmentally disabled person~~) for the purpose of providing documentary evidence of the physical condition of the child (~~(, adult dependent or developmentally disabled person)~~).

Sec. 34. RCW 74.39A.060 and 1997 c 392 s 210 are each amended to read as follows:

(1) The aging and adult services administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the administration licenses or with which it contracts for long-term care services.

(2) All facilities that are licensed by, or that contract with the aging and adult services administration to provide chronic long-term care services shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombudsman as provided by RCW 43.190.050.

(3) The aging and adult services administration shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; or (b) there is no reasonable basis for investigation; or (c) corrective action has been taken as determined by the ombudsman or the department.

(4) The aging and adult services administration shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombudsman, or other entities if the department lacks authority to investigate or if its investigation reveals that a follow-up referral to one or more of these entities is appropriate.

(5) The department shall adopt rules that include the following complaint investigation protocols:

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

(b) The complainant must be: Promptly contacted by the department, unless anonymous or unavailable despite several attempts by the department, and informed of the right to discuss the alleged violations with the inspector and to provide other information the complainant believes will assist the inspector;

informed of the department's course of action; and informed of the right to receive a written copy of the investigation report.

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the ~~((resident or residents))~~ vulnerable adult or adults allegedly harmed ~~((by the violations))~~, and, ~~((in addition to))~~ consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the ~~((resident))~~ vulnerable adult.

(d) Substantiated complaints involving harm to a resident, if an applicable law or ~~((regulation))~~ rule has been violated, shall be subject to one or more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever appropriate, the department shall also give consultation and technical assistance to the provider.

(e) In the best practices of total quality management and continuous quality improvement, after a department finding of a violation that is serious, recurring, or uncorrected following a previous citation, the department shall make an on-site revisit of the facility to ensure correction of the violation, except for license or contract suspensions or revocations.

(f) Substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal violations, shall also be referred by the department to the appropriate law enforcement agencies, the attorney general, and appropriate professional disciplining authority.

(6) The department may provide the substance of the complaint to the licensee or contractor before the completion of the investigation by the department unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose, or reasonably lead to the disclosure of, the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the provider and the name or names of any officer, employee, or agent of the department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant. Nothing in this subsection shall be construed to interfere with the obligation of the long-term care ombudsman program or department staff to monitor the department's licensing, contract, and complaint investigation files for long-term care facilities.

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility that provides long-term care services shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that

such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombudsman. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection.

NEW SECTION. Sec. 35. The following acts or parts of acts are each repealed:

(1) RCW 74.34.010 (Legislative findings—Intent) and 1997 c 392 s 303, 1995 1st sp.s. c 18 s 82, & 1984 c 97 s 7;

(2) RCW 74.34.015 (Protection of frail elders and vulnerable adults—Legislative findings and intent) and 1995 1st sp.s. c 18 s 83 & 1986 c 187 s 4;

(3) RCW 74.34.030 (Reports—Duty to make) and 1995 1st sp.s. c 18 s 88, 1986 c 187 s 1, & 1984 c 97 s 9;

(4) RCW 74.34.055 (Failure to report is gross misdemeanor) and 1997 c 392 s 522; and

(5) RCW 74.34.060 (Response to reports—Services—Consent) and 1984 c 97 s 12.

NEW SECTION. Sec. 36. 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. 37. 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. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed the House March 16, 1999.
Passed the Senate April 15, 1999.
Approved by the Governor May 5, 1999.
Filed in Office of Secretary of State May 5, 1999.

CHAPTER 177

[Second Substitute House Bill 1729] TEACHER TRAINING PILOT PROGRAM

AN ACT Relating to a teacher training pilot program; adding new sections to chapter 28B.80 RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** There is a need for a coordinated program of teacher training that will involve high schools, community colleges, and four-year institutions of higher education in a collaborative, seamless approach to developing teachers for the kindergarten through twelfth grade system. Therefore, it is the intent of the legislature that an innovative pilot project be established for teacher training and attracting teacher candidates. Furthermore, the legislature intends to establish a pilot program by creating a competitive grant program to assist educational institutions in developing teacher training programs.

NEW SECTION. **Sec. 2.** (1) The higher education coordinating board, in consultation with the state board of education has the following powers and duties in administering the pilot program established in section 3 of this act:

- (a) To adopt rules necessary to carry out the program;
- (b) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities and shall include representatives from elementary, two-year, and four-year sectors of education;
- (c) To award grants no later than September 1st in those years when funding is available by June 30th;
- (d) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. During the 1999-2001 biennium, the guidelines shall be consistent with the following desired outcomes of:
 - (i) Designing a college-level course for enrollment of selected high school seniors interested in teaching careers and students enrolled in a school-based future teachers academy;
 - (ii) Designing discipline-based lower division courses that are thematically linked to state student learning goals, essential academic learning requirements, and upper division courses in the interdisciplinary arts and science curriculum and supportive of teaching areas appropriate for prospective teachers;

(iii) Designing a preprofessional educational studies minor that would be pursued by prospective kindergarten through eighth grade teachers in conjunction with an interdisciplinary arts and science major;

(iv) Designing mentoring and service learning activities at the community college level that would provide prospective teachers with an orientation to professional education; and

(v) Designing a process for satisfying certification requirements that encompasses pedagogical coursework and school-based internships cognizant of the financial constraints of working students.

(2) The pilot project in this section shall conclude no later than January 1, 2005.

(3) Beginning on December 31, 2001, the higher education coordinating board shall submit an annual written report to the education and higher education committees of the legislature, the state board of education, and the office of the superintendent of public instruction on the status of the pilot project.

NEW SECTION. Sec. 3. The Washington teacher training pilot program is established. The higher education coordinating board shall administer the program. Through this program the board may award, on a competitive basis, grants to public institutions of higher education or consortia of institutions to encourage high quality and effective teacher training programs. Grants shall not exceed a two-year period. Strong priority shall be given to proposals that involve shared facilities, shared resources, and cocurricular planning to establish the teacher training program, and to proposals that involve participants from the interdisciplinary arts and science curriculum and professional education faculty as well as classroom teachers from school districts. Institutions of higher education are encouraged to solicit nonstate funds to support this coordinated approach to teacher training.

NEW SECTION. Sec. 4. The higher education coordinating board may solicit and receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program and may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

NEW SECTION. Sec. 5. The higher education coordinating board teacher training pilot account is established in the custody of the state treasurer. The higher education coordinating board shall deposit in the account all moneys received under section 4 of this act. Moneys in the account may be spent only for the purposes of section 3 of this act. Disbursements from the account shall be on the authorization of the higher education coordinating board. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec. 7.** Sections 2 through 5 of this act are each added to chapter 28B.80 RCW.

NEW SECTION. **Sec. 8.** Sections 1 through 5 of this act expire January 30, 2005.

Passed the House March 12, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 178

[Substitute House Bill 1811]

SUPPORTED EMPLOYMENT—INDIVIDUALS WITH SIGNIFICANT DISABILITIES

AN ACT Relating to supported employment; amending RCW 41.04.750, 41.04.760, and 41.04.770; and amending 1997 c 287 s 1 (uncodified).

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

Sec. 1. 1997 c 287 s 1 (uncodified) is amended to read as follows:

The legislature finds that the rate of unemployment among ~~((persons))~~ individuals with developmental disabilities or other significant disabilities is high due to the limited employment opportunities available to ~~((disabled persons))~~ them. Given that ~~((persons))~~ individuals with developmental disabilities or other significant disabilities are capable of filling employment positions in the general work force population, supported employment is an effective way of integrating such individuals into the general work force population. The creation of supported employment programs can increase the types and availability of employment positions for ~~((persons))~~ individuals with developmental disabilities or other significant disabilities.

Sec. 2. RCW 41.04.750 and 1997 c 287 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 41.04.760 through 41.04.780.

(1) "Developmental disability" means a disability as defined in RCW 71A.10.020.

(2) "Significant disability" means a disability as defined in 29 U.S.C. Sec. 705.

(3) "Supported employment" means employment for individuals with developmental disabilities or other significant disabilities who ~~((may))~~ require on-the-job training and long-term support in order to fulfill their job duties successfully. Supported employment offers the same wages and benefits as similar nonsupported employment positions.

~~((3))~~ (4) "State agency" means any office, department, division, bureau, board, commission, community college or institution of higher education, or agency of the state of Washington.

Sec. 3. RCW 41.04.760 and 1997 c 287 s 3 are each amended to read as follows:

State agencies are encouraged to participate in supported employment activities. The department of social and health services, in conjunction with the department of personnel and the office of financial management, shall identify agencies that have positions and funding conducive to implementing supported employment. An agency may only participate in supported employment activities pursuant to this section if the agency is able to operate the program within its existing budget. These agencies shall:

(1) Designate a coordinator who will be responsible for information and resource referral regarding the agency's supported employment program. The coordinator shall serve as a liaison between the agency and the department of personnel regarding supported employment;

(2) Submit an annual update to the department of social and health services, the department of personnel, and the office of financial management. The annual update shall include: A description of the agency's supported employment efforts, the number of ~~((persons))~~ individuals placed in supported employment positions, ~~((recommendations concerning expanding the supported employment program to include people with mental disabilities or other disabilities;))~~ and an overall evaluation of the effectiveness of supported employment for the agency.

*Sec. 4. RCW 41.04.770 and 1997 c 287 s 4 are each amended to read as follows:

The department of social and health services and the department of personnel shall, after consultation with supported employment provider associations and other interested parties, encourage, educate, and assist state agencies in implementing supported employment programs. The department of social and health services shall maintain information regarding the number of supported employment placements by type of disability and report this information to the department of personnel. The department of personnel shall provide human resources technical assistance to agencies implementing supported employment programs. The department of personnel shall make available, upon request of the legislature, an annual report that evaluates the overall progress of supported employment in state government.

*Sec. 4 was vetoed. See message at end of chapter.

Passed the House April 20, 1999.

Passed the Senate April 15, 1999.

Approved by the Governor May 5, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 5, 1999.

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

"I am returning herewith, without my approval as to section 4, Substitute House Bill No. 1811 entitled:

"AN ACT Relating to supported employment;"

This bill would expand the state's supported employment program to include individuals with more significant disabilities than are currently included. The supported employment program offers on-the-job training and long-term support to disabled people at the same wages and benefits received by people in similar positions who are not disabled.

Section 4 of the bill would require the Department of Social and Health Services (DSHS) to maintain certain information, and to report that information to the Department of Personnel, and for the Department of Personnel to in turn report the information to the legislature on request. Such a provision is inefficient and unnecessary in statute. DSHS currently maintains the information and will continue to do so. If the legislature wants information on supported employment, it may request it at any time.

For these reasons, I have vetoed section 4 of Substitute House Bill No. 1811.

With the exception of section 4, Substitute House Bill No. 1811 is approved."

CHAPTER 179

[Substitute House Bill 1838]

IMPAIRED DENTIST PROGRAM—SURCHARGE

AN ACT Relating to the impaired dentist program; and amending RCW 18.32.534.

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

Sec. 1. RCW 18.32.534 and 1994 sp.s. c 9 s 220 are each amended to read as follows:

(1) To implement an impaired dentist program as authorized by RCW 18.130.175, the commission shall enter into a contract with a voluntary substance abuse monitoring program. The impaired dentist program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired dentists to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the commission;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired dentists; and
- (g) Performing other related activities as determined by the commission.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to (~~fifteen~~) twenty-five dollars on each license issuance or renewal to be collected by the department of health from every dentist licensed under chapter 18.32 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired dentist program.

Passed the House April 19, 1999.
Passed the Senate April 6, 1999.
Approved by the Governor May 5, 1999.
Filed in Office of Secretary of State May 5, 1999.

CHAPTER 180

[Substitute House Bill 2086]

UNLAWFUL DISCHARGE OF LASERS

AN ACT Relating to the unlawful discharge of lasers; amending RCW 9A.46.060; adding a new chapter to Title 9A RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that lasers are becoming both less expensive and more accessible in our technologically advanced society. Laser devices are being used by individuals in a manner so as to intimidate and harass. This creates an especially serious problem for law enforcement officers who reasonably believe they are the target of a laser sighting device on a firearm. Additionally, emergency service providers, service providers, and others who operate aircraft or motor vehicles may be negatively affected to the point of jeopardizing their safety as well as the safety of others. In order to address the misuse of lasers, the legislature hereby finds it necessary to criminalize the discharge of lasers under certain circumstances.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aircraft" means any contrivance known or hereafter invented, used, or designed for navigation of or flight in air.

(2) "Laser" means any device designed or used to amplify electromagnetic radiation by simulated emission which is visible to the human eye.

(3) "Laser sighting system or device" means any system or device which is integrated with or affixed to a firearm and which emits a laser light beam that is used by the shooter to assist in the sight alignment of that firearm.

NEW SECTION. Sec. 3. (1) A person is guilty of unlawful discharge of a laser in the first degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to malicious mischief in the first degree:

(a) At a law enforcement officer or other employee of a law enforcement agency who is performing his or her official duties in uniform or exhibiting evidence of his or her authority, and in a manner that would support that officer's or employee's reasonable belief that he or she is targeted with a laser sighting device or system; or

(b) At a law enforcement officer or other employee of a law enforcement agency who is performing his or her official duties, causing an impairment of the safety or operation of a law enforcement vehicle or causing an interruption or

impairment of service rendered to the public by negatively affecting the officer or employee; or

(c) At a pilot, causing an impairment of the safety or operation of an aircraft or causing an interruption or impairment of service rendered to the public by negatively affecting the pilot; or

(d) At a fire fighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who is performing his or her official duties, causing an impairment of the safety or operation of an emergency vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the fire fighter or employee; or

(e) At a transit operator or driver of a public or private transit company while that person is performing his or her official duties, causing an impairment of the safety or operation of a transit vehicle or causing an interruption or impairment of service rendered to the public by negatively affecting the operator or driver; or

(f) At a school bus driver employed by a school district or private company while the driver is performing his or her official duties, causing an impairment of the safety or operation of a school bus or causing an interruption or impairment of service rendered to the public by negatively affecting the bus driver.

(2) Except as provided in section 5 of this act, unlawful discharge of a laser in the first degree is a class C felony.

NEW SECTION. Sec. 4. (1) A person is guilty of unlawful discharge of a laser in the second degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to unlawful discharge of a laser in the first degree or malicious mischief in the first or second degree:

(a) At a person, not described in section 3(1) (a) through (f) of this act, who is operating a motor vehicle at the time, causing an impairment of the safety or operation of a motor vehicle by negatively affecting the driver; or

(b) At a person described in section 3(1) (b) through (f) of this act, causing a substantial risk of an impairment or interruption as described in section 3(1) (b) through (f) of this act; or

(c) At a person in order to intimidate or threaten that person.

(2) Except as provided in section 5 of this act, unlawful discharge of a laser in the second degree is a gross misdemeanor.

NEW SECTION. Sec. 5. Unlawful discharge of a laser in the first degree or second degree is a civil infraction if committed by a juvenile who has not before committed either offense. The monetary penalty imposed upon a juvenile may not exceed one hundred dollars.

NEW SECTION. Sec. 6. This chapter does not apply to the conduct of a laser development activity by or on behalf of the United States armed forces.

Sec. 7. RCW 9A.46.060 and 1997 c 338 s 52 are each 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 (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);
 - (33) Stalking (RCW 9A.46.110);
 - (34) Residential burglary (RCW 9A.52.025); ~~((and))~~
 - (35) Violation of a temporary or permanent protective order issued pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW;
 - (36) Unlawful discharge of a laser in the first degree (section 3 of this act);
- and
- (37) Unlawful discharge of a laser in the second degree (section 4 of this act).

NEW SECTION. Sec. 8. Sections 2 through 6 of this act constitute a new chapter in Title 9A RCW.

Passed the House March 11, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 181

[Substitute House Bill 2152]

EXCEPTIONAL CARE AND THERAPY CARE PAYMENT RATES

AN ACT Relating to exceptional care and therapy care payment rates; amending RCW 74.46.506 and 74.46.511; adding a new section to chapter 74.46 RCW; and providing an expiration date.

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

Sec. 1. RCW 74.46.506 and 1998 c 322 s 25 are each amended to read as follows:

(1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) Beginning October 1, 1998, the department shall determine and update quarterly for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each calendar quarter. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary corrected by, the department in the resident assessment instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be 1996 and 1999, for rate periods as specified in RCW 74.46.431(4)(a).

(5) Beginning October 1, 1998, the department shall rebase each nursing facility's direct care component rate allocation as described in RCW 74.46.431, adjust its direct care component rate allocation for economic trends and conditions as described in RCW 74.46.431, and update its medicaid average case mix index, consistent with the following:

(a) Reduce total direct care costs reported by each nursing facility for the applicable cost report period specified in RCW 74.46.431(4)(a) to reflect any

department adjustments, and to eliminate reported resident therapy costs and adjustments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of eighty-five percent; that is, the greater of actual or imputed occupancy at eighty-five percent of licensed beds, to derive the facility's allowable direct care cost per resident day;

(c) Adjust the facility's per resident day direct care cost by the applicable factor specified in RCW 74.46.431(4) (b) and (c) to derive its adjusted allowable direct care cost per resident day;

(d) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by RCW 74.46.501(7)(b) to derive the facility's allowable direct care cost per case mix unit;

(e) Divide nursing facilities into two peer groups: Those located in metropolitan statistical areas as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government, and those not located in a metropolitan statistical area;

(f) Array separately the allowable direct care cost per case mix unit for all metropolitan statistical area and for all nonmetropolitan statistical area facilities, and determine the median allowable direct care cost per case mix unit for each peer group;

(g) Except as provided in (k) of this subsection, from October 1, 1998, through June 30, 2000, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than eighty-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to eighty-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred fifteen percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred fifteen percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between eighty-five and one hundred fifteen percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid

average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(h) Except as provided in (k) of this subsection, from July 1, 2000, through June 30, 2002, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between ninety and one hundred ten percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(i) From July 1, 2002, through June 30, 2004, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred five percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred five percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between ninety-five and one hundred five percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's

allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(j) Beginning July 1, 2004, determine each facility's quarterly direct care component rate by multiplying the facility's peer group median allowable direct care cost per case mix unit by that facility's medicaid average case mix index from the applicable quarter as specified in RCW 74.46.501(7)(c).

(k)(i) Between October 1, 1998, and June 30, 2000, the department shall compare each facility's direct care component rate allocation calculated under (g) of this subsection with the facility's nursing services component rate in effect on ~~((June))~~ September 30, 1998, less therapy costs, plus any exceptional care offsets as reported on the cost report, adjusted for economic trends and conditions as provided in RCW 74.46.431. A facility shall receive the higher of the two rates;

(ii) Between July 1, 2000, and June 30, 2002, the department shall compare each facility's direct care component rate allocation calculated under (h) of this subsection with the facility's direct care component rate in effect on June 30, 2000. A facility shall receive the higher of the two rates.

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

(7) Payments resulting from increases in direct care component rates, granted under authority of section 2(1) of this act for a facility's exceptional care residents, shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care costs shall be for rate setting, settlement, and other purposes deemed appropriate by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 74.46 RCW to read as follows:

(1)(a) The department is authorized to increase the direct care component rate allocation calculated under RCW 74.46.506(5) for residents who have unmet exceptional care needs as determined by the department in rule. The department may, by rule, establish criteria, patient categories, and methods of exceptional care payment.

(b) The department shall submit a report to the health care and fiscal committees of the legislature by December 12, 2002, that addresses:

(i) The number of individuals on whose behalf exceptional care payments have been made under this section, their diagnosis, and the amount of the payments; and

(ii) An assessment as to whether the availability of exceptional care payments resulted in more expedient placement of residents into nursing homes and fewer and/or shorter hospitalizations.

(2)(a) The department shall by January 1, 2000, adopt rules and implement a system of exceptional care payments for therapy care.

(i) Payments may be made on behalf of facility residents who are under age sixty-five, not eligible for medicare, and can achieve significant progress in their functional status if provided with intensive therapy care services.

(ii) Payment under this subsection is limited to no more than twelve facilities that have demonstrated excellence in therapy care, based upon criteria defined by rule. A facility accredited by the commission for accreditation of rehabilitation facilities (CARF) shall be deemed to meet the criteria for demonstrated excellence in therapy care. However, CARF accreditation is not required for payment under this subsection.

(iii) Payments may be made only after approval of a rehabilitation plan of care for each resident on whose behalf a payment is made under this subsection, and each resident's progress must be periodically monitored.

(b) The department shall submit a report to the health care and fiscal committees of the legislature by December 12, 2002, that addresses:

(i) The number of individuals on whose behalf therapy payments were made under this section, and the amount of the payments; and

(ii) An assessment as to whether the availability of exceptional care payments for therapy care resulted in substantial progress in residents' functional status, more expedient placement of residents into less expensive settings, or other long-term cost savings.

(3) This section expires June 30, 2003.

Sec. 3. RCW 74.46.511 and 1998 c 322 s 26 are each amended to read as follows:

(1) The therapy care component rate allocation corresponds to the provision of medicaid one-on-one therapy provided by a qualified therapist as defined in this chapter, including therapy supplies and therapy consultation, for one day for one medicaid resident of a nursing facility. The therapy care component rate allocation for October 1, 1998, through June 30, 2001, shall be based on adjusted therapy costs and days from calendar year 1996. The therapy component rate allocation for July 1, 2001, through June 30, 2004, shall be based on adjusted therapy costs and days from calendar year 1999. The therapy care component rate shall be adjusted for economic trends and conditions as specified in RCW 74.46.431(5)(b), and shall be determined in accordance with this section.

(2) In rebasing, as provided in RCW 74.46.431(5)(a), the department shall take from the cost reports of facilities the following reported information:

(a) Direct one-on-one therapy charges for all residents by payer including charges for supplies;

(b) The total units or modules of therapy care for all residents by type of therapy provided, for example, speech or physical. A unit or module of therapy care is considered to be fifteen minutes of one-on-one therapy provided by a qualified therapist or support personnel; and

(c) Therapy consulting expenses for all residents.

(3) The department shall determine for all residents the total cost per unit of therapy for each type of therapy by dividing the total adjusted one-on-one therapy expense for each type by the total units provided for that therapy type.

(4) The department shall divide medicaid nursing facilities in this state into two peer groups:

(a) Those facilities located within a metropolitan statistical area; and

(b) Those not located in a metropolitan statistical area.

Metropolitan statistical areas and nonmetropolitan statistical areas shall be as determined by the United States office of management and budget or other applicable federal office. The department shall array the facilities in each peer group from highest to lowest based on their total cost per unit of therapy for each therapy type. The department shall determine the median total cost per unit of therapy for each therapy type and add ten percent of median total cost per unit of therapy. The cost per unit of therapy for each therapy type at a nursing facility shall be the lesser of its cost per unit of therapy for each therapy type or the median total cost per unit plus ten percent for each therapy type for its peer group.

(5) The department shall calculate each nursing facility's therapy care component rate allocation as follows:

(a) To determine the allowable total therapy cost for each therapy type, the allowable cost per unit of therapy for each type of therapy shall be multiplied by the total therapy units for each type of therapy;

(b) The medicaid allowable one-on-one therapy expense shall be calculated taking the allowable total therapy cost for each therapy type times the medicaid percent of total therapy charges for each therapy type;

(c) The medicaid allowable one-on-one therapy expense for each therapy type shall be divided by total adjusted medicaid days to arrive at the medicaid one-on-one therapy cost per patient day for each therapy type;

(d) The medicaid one-on-one therapy cost per patient day for each therapy type shall be multiplied by total adjusted patient days for all residents to calculate the total allowable one-on-one therapy expense. The lesser of the total allowable therapy consultant expense for the therapy type or a reasonable percentage of allowable therapy consultant expense for each therapy type, as established in rule by the department, shall be added to the total allowable one-on-one therapy expense to determine the allowable therapy cost for each therapy type;

(e) The allowable therapy cost for each therapy type shall be added together, the sum of which shall be the total allowable therapy expense for the nursing facility;

(f) The total allowable therapy expense will be divided by the greater of adjusted total patient days from the cost report on which the therapy expenses were reported, or patient days at eighty-five percent occupancy of licensed beds. The outcome shall be the nursing facility's therapy care component rate allocation.

(6) The therapy care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retroactively.

(7) The therapy care component rate shall be suspended for medicaid residents in qualified nursing facilities designated by the department who are receiving therapy paid by the department outside the facility daily rate under section 2(2) of this act.

Passed the House April 8, 1999.

Passed the Senate April 16, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 182

[House Bill 2264]

JUVENILE ACCOUNTABILITY INCENTIVE ACCOUNT

AN ACT Relating to meeting the trust account requirement of the juvenile accountability incentive block grant; amending RCW 43.79A.040; and adding a new section to chapter 13.40 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40 RCW to read as follows:

The juvenile accountability incentive account is created in the custody of the state treasurer. Federal awards for juvenile accountability incentives received by the secretary of the department of social and health services, shall be deposited into the account. Interest earned from the inception of the trust account shall be deposited in the account. Expenditures from the account may be used only for the purposes specified in the federal award or awards. Moneys in the account may be spent only after appropriation.

Sec. 2. RCW 43.79A.040 and 1998 c 268 s 1 are each amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the Washington international exchange scholarship endowment fund, the energy account, the fair fund, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility grant account, the self-insurance revolving fund, the sulfur dioxide abatement account, and the children's trust fund. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

Passed the House March 15, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 183

[Senate Bill 5040]

BOILERS AND UNFIRED PRESSURE VESSELS—INSPECTIONS

AN ACT Relating to boilers and unfired pressure vessels; and amending RCW 70.79.010, 70.79.030, 70.79.080, 70.79.090, 70.79.130, 70.79.140, 70.79.150, 70.79.160, 70.79.280, and 70.79.310.

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

Sec. 1. RCW 70.79.010 and 1951 c 32 s 1 are each amended to read as follows:

There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers (~~or practical steam~~), stationary operating engineers, or pressure vessel operators. The board shall elect one of its members to serve as (~~chairman~~) chair and, at the call of the (~~chairman~~) chair, the board shall meet at least four times each year at the state capitol or other place designated by the board.

Sec. 2. RCW 70.79.030 and 1972 ex.s. c 86 s 1 are each amended to read as follows:

The board shall formulate definitions(~~(;)~~) and rules(~~(; and regulations)~~) for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions(~~(;)~~) and rules(~~(; and regulations)~~) so formulated shall be based upon, and, at all times, follow the (~~generally~~) nationally or internationally accepted (~~nationwide~~) engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt (~~an~~) existing published codifications thereof, (~~known as "The Boiler Construction Code of the American Society of Mechanical Engineers", with the amendments and~~

~~interpretations thereto made and approved by the council of the society, and may likewise adopt the amendments and interpretations subsequently made and published by the same authority;)) and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions((;)) and rules((;and regulations)) of the board. Amendments and interpretations to the code ((so adopted)) shall be ((adopted)) enforceable immediately upon being ((promulgated)) adopted, to the end that the definitions((;)) and rules((;and regulations)) shall at all times follow ((the generally)) nationally or internationally accepted ((nationwide)) engineering standards((;PROVIDED;)). However, ((That)) all rules ((and regulations promulgated)) adopted by the board((;including any or all of the boiler construction code of the American society of mechanical engineers with amendments and interpretations thereof;)) shall be adopted in compliance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. ((All boilers and unfired pressure vessels subject to the jurisdiction of the board, which have been constructed or installed in accordance with the code of the American society of mechanical engineers shall be prima facie evidence of compliance with those provisions of this chapter and the rules of the board;))~~

Sec. 3. RCW 70.79.080 and 1996 c 72 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)) a temperature of one hundred thirty degrees Fahrenheit or less;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of 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 Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels and hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge (psig) or less, or less than six inches in diameter and less than five cubic feet (37.5 gallons) in volume with a safety valve set at any pressure, or less than fifteen psig containing substances other than steam, lethal substances, or liquids with low flash points.

Sec. 4. RCW 70.79.090 and 1988 c 254 s 20 are each amended to read as follows:

The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: **PROVIDED, HOWEVER,** That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families;

(7) Unfired pressure vessels containing liquified petroleum gases.

Sec. 5. RCW 70.79.130 and 1951 c 32 s 13 are each amended to read as follows:

In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating boilers or unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his or her commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers and unfired pressure vessels from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating boilers or unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of boilers or unfired pressure vessels used, or to be used, by such company.

Sec. 6. RCW 70.79.140 and 1951 c 32 s 14 are each amended to read as follows:

Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating boilers or unfired pressure vessels in this state and upon his or her maintenance of the standards imposed by this chapter.

Sec. 7. RCW 70.79.150 and 1951 c 32 s 15 are each amended to read as follows:

Special inspectors shall inspect all boilers and unfired pressure vessels insured or ~~((all unfired pressure vessels))~~ operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330.

Sec. 8. RCW 70.79.160 and 1951 c 32 s 16 are each amended to read as follows:

Each company employing special inspectors shall, within thirty days following each internal boiler or unfired pressure vessel inspection made by such inspectors,

file a report of such inspection with the chief inspector upon appropriate forms (~~as promulgated by the American society of mechanical engineers~~). Reports of external inspections shall not be required except when such inspections disclose that the boiler or unfired pressure vessel is in dangerous condition.

Sec. 9. RCW 70.79.280 and 1951 c 32 s 27 are each amended to read as follows:

All boilers and all unfired pressure vessels to be installed in this state after the ~~((twelve months))~~ twelve-month period from the date upon which the rules ~~((and regulations))~~ of the board shall become effective shall be inspected during construction as required by the applicable rules ~~((and regulations))~~ of the board by an inspector authorized to inspect boilers and unfired pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170.

Sec. 10. RCW 70.79.310 and 1951 c 32 s 30 are each amended to read as follows:

The chief inspector, or his or her authorized representative, may at any time suspend an inspection certificate when, in his or her opinion, the boiler or unfired pressure vessel for which it was issued ~~((;))~~ cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules ~~((and regulations))~~ herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or ~~((unfired pressure vessels))~~ operated by the company employing him or her. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules ~~((and regulations))~~ of the board, and until said inspection certificate shall have been reinstated.

Passed the Senate April 20, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 184

[Substitute Senate Bill 5134]

FOREIGN PROTECTION ORDER FULL FAITH AND CREDIT ACT

AN ACT Relating to full faith and credit for foreign protection orders; amending RCW 26.10.220, 26.26.138, 26.50.010, and 10.31.100; adding a new chapter to Title 26 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. CITATION. This act may be known and cited as the foreign protection order full faith and credit act.

NEW SECTION. Sec. 2. LEGISLATIVE INTENT. The problem of women fleeing across state lines to escape their abusers is epidemic in the United States. In 1994, Congress enacted the violence against women act (VAWA) as Title IV of the violent crime control and law enforcement act (P.L. 103-322). The VAWA provides for improved prevention and prosecution of violent crimes against women and children. Section 2265 of the VAWA (Title IV, P.L. 103-322) provides for national-wide enforcement of civil and criminal protection orders in state and tribal courts throughout the country.

The legislature finds that existing statutes may not provide an adequate mechanism for victims, police, prosecutors, and courts to enforce a foreign protection order in our state. It is the intent of the legislature that the barriers faced by persons entitled to protection under a foreign protection order will be removed and that violations of foreign protection orders be criminally prosecuted in this state.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Domestic or family violence" includes, but is not limited to, conduct when committed by one family member against another that is classified in the jurisdiction where the conduct occurred as a domestic violence crime or a crime committed in another jurisdiction that under the laws of this state would be classified as domestic violence under RCW 10.99.020.

(2) "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, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Foreign protection order" means an injunction or other order related to domestic or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

(4) "Harassment" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as harassment or a crime committed

in another jurisdiction that under the laws of this state would be classified as harassment under RCW 9A.46.040.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays in Washington state.

(6) "Person entitled to protection" means a person, regardless of whether the person was the moving party in the foreign jurisdiction, who is benefited by the foreign protection order.

(7) "Person under restraint" means a person, regardless of whether the person was the responding party in the foreign jurisdiction, whose ability to contact or communicate with another person, or to be physically close to another person, is restricted by the foreign protection order.

(8) "Sexual abuse" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as a sex offense or a crime committed in another jurisdiction that under the laws of this state would be classified as a sex offense under RCW 9.94A.030.

(9) "Stalking" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as stalking or a crime committed in another jurisdiction that under the laws of this state would be classified as stalking under RCW 9A.46.110.

(10) "Washington court" includes the superior, district, and municipal courts of the state of Washington.

NEW SECTION. Sec. 4. VALID FOREIGN PROTECTION ORDERS. A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, tribe, or United States military tribunal. There is a presumption in favor of validity where an order appears authentic on its face.

A person under restraint must be given reasonable notice and the opportunity to be heard before the order of the foreign state, territory, possession, tribe, or United States military tribunal was issued, provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

NEW SECTION. Sec. 5. FILING OF FOREIGN PROTECTION ORDERS. (1) A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a clerk of the court of a Washington court in which the person entitled to protection resides or to a clerk of the court of a Washington court where the person entitled to protection believes enforcement may be necessary. Any out-of-state department, agency, or court responsible for maintaining protection order records, may by facsimile or electronic transmission send a reproduction of the foreign protection order to the clerk of the court of Washington as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

(2) Filing of a foreign protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.

(3) The court shall accept the filing of a foreign protection order without a fee or cost.

(4) The clerk of the court shall provide information to a person entitled to protection of the availability of domestic violence, sexual abuse, and other services to victims in the community where the court is located and in the state.

(5) The clerk of the court shall assist the person entitled to protection in completing an information form that must include, but need not be limited to, the following:

(a) The name of the person entitled to protection and any other protected parties;

(b) The name and address of the person who is subject to the restraint provisions of the foreign protection order;

(c) The date the foreign protection order was entered;

(d) The date the foreign protection order expires;

(e) The relief granted under (specify the relief awarded and citations thereto, and designate which of the violations are arrestable offenses);

(f) The judicial district and contact information for court administration for the court in which the foreign protection order was entered;

(g) The social security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;

(h) Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;

(i) Whether the person who is subject to the restraint provisions of the foreign protection order was served with the order, and if so, the method used to serve the order;

(j) The type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection.

An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.

(6) The clerk of the court shall provide the person entitled to protection with a copy bearing proof of filing with the court.

(7) Any assistance provided by the clerk under this section does not constitute the practice of law. The clerk is not liable for any incomplete or incorrect information that he or she is provided.

NEW SECTION. Sec. 6. TRANSMITTAL OF FILED FOREIGN PROTECTION ORDERS TO LAW ENFORCEMENT AGENCY. (1) The clerk of the court shall forward a copy of a foreign protection order that is filed under this chapter on or before the next judicial day to the county sheriff along with the

completed information form. The clerk may forward the foreign protection order to the county sheriff by facsimile or electronic transmission.

Upon receipt of a filed foreign protection order, the county sheriff shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The county sheriff shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

NEW SECTION. Sec. 7. PEACE OFFICER IMMUNITY. A peace officer or a peace officer's legal advisor may not be held criminally or civilly liable for making an arrest under this chapter if the peace officer or the peace officer's legal advisor acted in good faith and without malice.

NEW SECTION. Sec. 8. FEES NOT PERMITTED. A public agency may not charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this chapter or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order entered by a Washington court. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost.

NEW SECTION. Sec. 9. VIOLATION OF FOREIGN ORDERS. (1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is a gross misdemeanor except as provided in subsections (3) and (4) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require the person under restraint to submit to electronic monitoring. The court shall specify who will provide the electronic monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign

protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order that prohibits the person under restraint from contacting or communicating with another person, or a provision that excludes the person under restraint from a residence, workplace, school, or day care, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) An assault that is a violation of a valid foreign protection order that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and conduct in violation of a valid foreign protection order issued under this chapter that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(4) A violation of a valid foreign protection order is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under chapter 10.99 RCW, a domestic violence protection order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW, or a federal or out-of-state order that is comparable to a no-contact or protection order issued under Washington law. The previous convictions may involve the same person entitled to protection or other person entitled to protection specifically protected by the no-contact orders or protection orders the offender violated.

NEW SECTION. Sec. 10. CHILD CUSTODY DISPUTES. (1) Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with chapter 26.27 RCW and in accordance with the parental kidnapping prevention act, 28 U.S.C. 1738A.

(2) A peace officer shall not remove a child from his or her current placement unless:

(a) A writ of habeas corpus to produce the child has been issued by a superior court of this state; or

(b) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050.

Sec. 11. RCW 26.10.220 and 1996 c 248 s 10 are each amended to read as follows:

(1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another is a gross misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;
 (b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

Sec. 12. RCW 26.26.138 and 1996 c 248 s 11 are each amended to read as follows:

(1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another is a gross misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice.

Sec. 13. RCW 26.50.010 and 1995 c 246 s 1 are each amended to read as follows:

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "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, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a ((respondent)) person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

Sec. 14. RCW 10.31.100 and 1997 c 66 s 10 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in section 3 of this act, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable

by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.025 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer

has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police officer acts in good faith and without malice.

NEW SECTION. Sec. 15. Sections 1 through 10 and 16 of this act constitute a new chapter in Title 26 RCW.

NEW SECTION. Sec. 16. CAPTIONS NOT LAW. Captions used in this chapter are not part of the law.

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.

Passed the Senate April 21, 1999.

Passed the House April 8, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 185

[Substitute Senate Bill 5147]

INDUSTRIAL INSURANCE—PAYMENT AFTER DEATH

AN ACT Relating to payment of industrial insurance awards after death; and amending RCW 51.32.040 and 51.48.110.

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

Sec. 1. RCW 51.32.040 and 1996 c 47 s 1 are each amended to read as follows:

(1) Except as provided in RCW 43.20B.720 and 74.20A.260, no money paid or payable under this title shall, before the issuance and delivery of the check or

warrant, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the award or the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. The department or self-insurer may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries.

Sec. 2. RCW 51.48.110 and 1986 c 56 s 1 are each amended to read as follows:

Where death results from the injury or occupational disease and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars, less any amount that the self-insurer paid under RCW 51.32.040(2) as payment due for the period of time before the worker's death.

Passed the Senate April 20, 1999.

Passed the House April 9, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 186

[Engrossed Substitute Senate Bill 5175]

SURPLUS COMPUTERS—DONATIONS TO SCHOOL DISTRICTS

AN ACT Relating to the donation of surplus computers and computer-related equipment to school districts in Washington and educational service districts in Washington; adding a new section to chapter 43.19 RCW; and adding a new section to chapter 44.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.19 RCW, to be codified between RCW 43.19.190 and 43.19.1937, to read as follows:

(1) In addition to disposing of property under RCW 28A.335.180, 39.33.010, 43.19.1919, and 43.19.1920, state-owned, surplus computers and computer-related equipment may be donated to any school district or educational service district under the guidelines and distribution standards established pursuant to subsection (2) of this section.

(2) By September 1, 1999, the department and office of the superintendent of public instruction shall jointly develop guidelines and distribution standards for the donation of state-owned, surplus computers and computer-related equipment to school districts and educational service districts. The guidelines and distribution standards shall include considerations for quality, school-district needs, and accountability, and shall give priority to meeting the computer-related needs of children with disabilities, including those disabilities necessitating the portability of laptop computers.

NEW SECTION. **Sec. 2.** A new section is added to chapter 44.04 RCW to read as follows:

The chief clerk of the house of representatives may authorize surplus computers and computer-related equipment owned by the house, the secretary of the senate may authorize surplus computers and computer-related equipment owned by the senate, and the directors of legislative agencies may authorize surplus computers and computer-related equipment owned by his or her respective agency, to be donated to school districts and educational service districts. This section shall not be construed to limit the discretion of the legislature regarding disposal of its surplus property.

Passed the Senate April 22, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 187

[Substitute Senate Bill 5213]

PRIVATE SCHOOL EMPLOYEES—RECORD CHECKS

AN ACT Relating to record checks of private school educational employees; adding a new section to chapter 28A.195 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.195 RCW to read as follows:

(1) The legislature finds additional safeguards are necessary to ensure safety of school children attending private schools in the state of Washington. Private schools approved under this chapter are authorized to require that employees who have regularly scheduled unsupervised access to children, whether current employees on the effective date of this act or applicants for employment on or after the effective date of this act, undergo a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.838, 10.97.030, and 10.97.050 and through the federal bureau of investigation. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. Employees or applicants for employment who have completed a record check in accordance with RCW 28A.410.010 shall not be required to undergo a record check under this section. The superintendent of public instruction shall provide a copy of the record report to the employee or applicant. If an employee or applicant has undergone a record check as authorized under this section, additional record checks shall not be required unless required by other provisions of law.

(2) The approved private school, the employee, or the applicant shall pay the costs associated with the record check authorized in this section.

(3) Applicants may be employed on a conditional basis pending completion of the investigation. If the employee or applicant has had a record check within the previous two years, the approved private school or contractor may waive any record check required by the approved private school under subsection (1) of this section.

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

Passed the Senate April 20, 1999.

Passed the House April 13, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 188

[Substitute Senate Bill 5279]

MINOR CHILDREN—PLACEMENT IN MENTAL HEALTH FACILITIES

AN ACT Relating to placement of children in mental health care by the department of social and health services; adding new sections to chapter 13.34 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature that minor children in the care and custody of the department of social and health services under chapter 13.34 RCW be provided the most appropriate possible mental health care consistent with the child's best interests, family reconciliation, the child's medical need for mental health treatment, available state and community resources, and professional standards of medical care. The legislature intends that admission of such minors for mental health hospitalization be made pursuant to the criteria and standards for mental health services for minors established in chapter 71.34 RCW, and that minor children in the care and custody of the department in need of mental health hospitalization shall retain all rights set forth therein. The legislature specifically intends that this act may not be construed to affect the standards or procedures established for the involuntary commitment of minors under chapter 71.34 RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

The department shall obtain the prior consent of a child's parent, legal guardian, or legal custodian before a dependent child is admitted into an inpatient mental health treatment facility. If the child's parent, legal guardian, or legal custodian is unavailable or does not agree with the proposed admission, the department shall request a hearing and provide notice to all interested parties to seek prior approval of the juvenile court before such admission. In the event that an emergent situation creating a risk of substantial harm to the health and welfare of a child in the custody of the department does not allow time for the department

to obtain prior approval or to request a court hearing before consenting to the admission of the child into an inpatient mental health hospital, the department shall seek court approval by requesting that a hearing be set on the first available court date.

NEW SECTION. Sec. 3. A new section is added to chapter 13.34 RCW to read as follows:

A dependent child who is admitted to an inpatient mental health facility shall be placed in a facility, with available treatment space, that is closest to the family home, unless the department, in consultation with the admitting authority finds that admission in the facility closest to the child's home would jeopardize the health or safety of the child.

NEW SECTION. Sec. 4. A new section is added to chapter 13.34 RCW to read as follows:

For minors who cannot consent to the release of their records with the department because they are not old enough to consent to treatment, or, if old enough, lack the capacity to consent, or if the minor is receiving treatment involuntarily with a provider the department has authorized to provide mental health treatment under section 2 of this act, the department shall disclose, upon the treating physician's request, all relevant records, including the minor's passport, in the department's possession that the treating physician determines contain information required for treatment of the minor. The treating physician shall maintain all records received from the department in a manner that distinguishes the records from any other records in the minor's file with the treating physician and the department records may not be disclosed by the treating physician to any other person or entity absent a court order.

Passed the Senate April 20, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 189

[Substitute Senate Bill 5304]

LIQUOR CODE VIOLATIONS—PENALTIES

AN ACT Relating to penalties imposed for violations of the state liquor code; amending RCW 66.28.230, and 66.44.100; adding a new section to chapter 66.28 RCW; creating a new section; repealing RCW 66.44.320; and prescribing penalties.

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

Sec. 1. RCW 66.28.230 and 1989 c 271 s 232 are each amended to read as follows:

~~((1) Except as provided in subsection (2) of this section, the violation of any provisions of RCW 66.28.200 through 66.28.220 is punishable by a fine of not more than five hundred dollars:~~

—(2)) Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a ~~((minor is liable, on conviction, for a first offense for a penalty of not more than five hundred dollars, or for imprisonment for not more than two months, or both; for a second offense for a penalty of not more than five hundred dollars or imprisonment for not more than six months, or both; and for a third or subsequent offense for a penalty of not more than five hundred dollars or imprisonment for more than one year, or both))~~ person under the age of twenty-one years is guilty of a gross misdemeanor punishable under RCW 9.92.020.

NEW SECTION. Sec. 2. A new section is added to chapter 66.28 RCW to read as follows:

The violation of any provisions of RCW 66.28.200 through 66.28.230 is a gross misdemeanor punishable under RCW 9.92.020.

Sec. 3. RCW 66.44.100 and 1981 1st ex.s. c 5 s 21 are each amended to read as follows:

Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a ~~((misdemeanor, and on conviction therefor shall be fined not more than one hundred dollars))~~ class 3 civil infraction under chapter 7.80 RCW.

NEW SECTION. Sec. 4. RCW 66.44.320 (Sales of liquor to minors a violation) and 1973 1st ex.s. c 209 s 19, 1933 c 2 s 1, & 1929 c 200 s 1 are each repealed.

NEW SECTION. Sec. 5. This act applies to crimes committed on or after the effective date of this act.

Passed the Senate April 22, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 190

[Senate Bill 5499]

IN-HOME CARE AGENCY LICENSURE

AN ACT Relating to in-home care agency licensure; amending RCW 70.127.010, 70.127.080, 70.127.090, and 70.127.110; and creating a new section.

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

Sec. 1. RCW 70.127.010 and 1993 c 42 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) (~~"Branch office"~~ means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision, and services.

—(~~2~~)) "Department" means the department of health.

((~~3~~)) (2) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

((~~4~~)) (3) "Home care services" means personal care services, homemaker services, respite care services, or any other nonmedical services provided to ill, disabled, or infirm persons which services enable these persons to remain in their own residences consistent with their desires, abilities, and safety.

((~~5~~)) (4) "Home health agency" means a private or public agency or organization that administers or provides home health aide services or two or more home health services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence. A private or public agency or organization that administers or provides nursing services only may elect to be designated a home health agency for purposes of licensure.

((~~6~~)) (5) "Home health services" means health or medical services provided to ill, disabled, or infirm persons. These services may be of an acute or maintenance care nature, and include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and medical supplies or equipment services.

((~~7~~)) (6) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

((~~8~~)) (7) "Homemaker services" means services that assist ill, disabled, or infirm persons with household tasks essential to achieving adequate household and family management.

((~~9~~)) (8) "Hospice agency" means a private or public agency or organization administering or providing hospice care directly or through a contract arrangement to terminally ill persons in places of temporary or permanent residence by using an interdisciplinary team composed of at least nursing, social work, physician, and pastoral or spiritual counseling.

((~~10~~)) (9) "Hospice care" means: (a) Palliative care provided to a terminally ill person in a place of temporary or permanent residence that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual

discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care may include health and medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

~~((11))~~ (10) "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

~~((12))~~ (11) "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

~~((13))~~ (12) "Public or private agency or organization" means an entity that employs or contracts with two or more persons who provide care in the home.

~~((14))~~ (13) "Respite care services" means services that assist or support the primary care giver on a scheduled basis.

(14) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

Sec. 2. RCW 70.127.080 and 1993 c 42 s 4 are each amended to read as follows:

(1) An applicant for a home health, hospice, or home care agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site review conducted by the department prior to licensure or renewal except as provided in RCW 70.127.085;

(d) Provide evidence of and maintain professional liability insurance in the amount of one hundred thousand dollars per occurrence or adequate self-insurance as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide evidence of and maintain public liability and property damage insurance coverage in the sum of fifty thousand dollars for injury or damage to property per occurrence and fifty thousand dollars for injury or damage, including death, to any one person and one hundred thousand dollars for injury or damage, including death, to more than one person, or evidence of adequate self-insurance for public liability and property damage as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(f) Provide such proof as the department may require concerning organizational structure, and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(g) File with the department for approval a ((list of the counties)) description of the service area in which the applicant will operate and a description of how the applicant intends to provide management and supervision of services throughout the service area. The department shall adopt rules necessary to establish criteria for approval that are related to appropriate management and supervision of services throughout the service area. In developing the rules, the department may not establish criteria that:

(i) Limit the number or type of agencies in any service area; or

(ii) Limit the number of persons any agency may serve within its service area unless the criteria are related to the need for trained and available staff to provide services within the service area;

(h) File with the department a list of the services offered;

(i) Pay to the department a license fee as provided in RCW 70.127.090; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure.

(3) A license or renewal shall not be granted pursuant to this chapter if the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets, within the last five years have been found in a civil or criminal proceeding to have committed any act which reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another.

~~((4) A separate license is not required for a branch office.))~~

Sec. 3. RCW 70.127.090 and 1993 c 42 s 5 are each amended to read as follows:

An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.70.250. The department shall adopt by rule licensure fees ((shall be)) based on a sliding scale using such factors as the number of agency full-time equivalents, ((with agencies with the highest number of full-time equivalents paying the highest fee. Full-time equivalent is a measurement based on a forty-hour work week and is applicable to paid agency employees or contractors)) geographic area served, number of locations, or type and volume of services provided. For agencies receiving a licensure survey that requires more than ~~((one))~~ two on-site reviews by the department per licensure period, an additional fee ~~((of fifty percent of the base licensure fee))~~ as determined by the department by rule shall be charged for each additional on-site review. The department shall charge a reasonable fee for processing changes in ownership. The department may set different licensure fees for each licensure category.

Sec. 4. RCW 70.127.110 and 1988 c 245 s 12 are each amended to read as follows:

The department shall adopt rules providing for the combination of applications and licenses, and the reduction of individual license fees if an applicant applies for more than one category of license under this chapter. The department shall provide

for combined licensure inspections and audits for licensees holding more than one license under this chapter. The department may prorate licensure fees to facilitate combined licensure inspections and audits.

NEW SECTION. Sec. 5. The department of health shall submit a report to the health care committees of the legislature with recommendations for any changes needed to the home health, hospice, and home care licensure law, chapter 70.127 RCW, in order to allow the department to regulate this fast-growing and evolving industry. The report, at a minimum, shall specifically address the following questions:

(1) Does the scope of the licensure law need to be revised in order to enhance protection for persons receiving home health, hospice, and home care services?

(2) Does the department of health need additional compliance strategies in order to provide protection for persons receiving home health, hospice, and home care services?

(3) Does chapter 70.126 RCW need to be retained in statute, or is it simply duplicative and confusing?

A report shall be submitted by November 1, 1999, together with any recommendations for legislation necessary to implement the findings and recommendations of the department of health. The department of health shall prepare the report with existing funds.

Passed the Senate April 20, 1999.

Passed the House April 9, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 191

[Substitute Senate Bill 5671]

CRIMINAL SABOTAGE

AN ACT Relating to anarchy and sabotage; amending RCW 9.05.030, 9.05.060, and 9.05.090; and repealing RCW 9.05.010, 9.05.020, 9.05.040, 9.05.050, 9.05.070, 9.05.080, 9.05.100, 9.05.110, 9.05.120, 9.05.130, 9.05.140, 9.05.150, and 9.05.160.

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

Sec. 1. RCW 9.05.030 and 1992 c 7 s 2 are each amended to read as follows:

Whenever two or more persons assemble for the purpose of (~~advocating or teaching the doctrines of criminal anarchy~~) committing criminal sabotage, as defined in RCW (~~9.05.010~~) 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid, or instigation, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Sec. 2. RCW 9.05.060 and 1919 c 173 s 1 are each amended to read as follows:

(1) Whoever, with intent that his or her act shall, or with reason to believe that it may, injure, interfere with, interrupt, supplant, nullify, impair, or obstruct the owner's or operator's management, operation, or control of any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile, or building enterprise, or any other public or private business or commercial enterprise, wherein ~~((persons are))~~ any person is employed for wage, shall willfully ~~((injure))~~ damage or destroy, or attempt or threaten to ~~((injure))~~ damage or destroy, any property whatsoever, or shall ~~((wilfully derange, or attempt or threaten to derange;))~~ unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property, instrumentality, machine, mechanism, or appliance used in such business or enterprise, shall be guilty of criminal sabotage.

(2) Criminal sabotage is a felony.

Sec. 3. RCW 9.05.090 and 1919 c 173 s 4 are each amended to read as follows:

RCW 9.05.030 and 9.05.060 ~~((through 9.05.080))~~ shall not be construed to repeal or amend any existing penal statute.

NEW SECTION. **Sec. 4.** The following acts or parts of acts are each repealed:

(1) RCW 9.05.010 (Criminal anarchy defined) and 1941 c 215 s 1, 1909 c 249 s 310, & 1903 c 45 s 1;

(2) RCW 9.05.020 (Advocating criminal anarchy—Penalty) and 1992 c 7 s 1, 1941 c 215 s 2, 1909 c 249 s 311, & 1903 c 45 s 2;

(3) RCW 9.05.040 (Permitting premises to be used for assemblages of anarchists) and 1909 c 249 s 315;

(4) RCW 9.05.050 (Evidence—Self-incrimination) and 1909 c 249 s 316;

(5) RCW 9.05.070 (Interference with owner's control) and 1919 c 173 s 2;

(6) RCW 9.05.080 (Penalty for advocating sabotage) and 1919 c 173 s 3;

(7) RCW 9.05.100 (Displaying emblems of seditious and anarchistic groups) and 1919 c 181 s 1;

(8) RCW 9.05.110 (Possession of emblems unlawful) and 1919 c 181 s 2;

(9) RCW 9.05.120 (Penalty) and 1919 c 181 s 3;

(10) RCW 9.05.130 (Searches and seizures) and 1919 c 181 s 4;

(11) RCW 9.05.140 (Exceptions) and 1919 c 181 s 5;

(12) RCW 9.05.150 (Publishing matter inciting breach of peace) and 1909 c 249 s 312; and

(13) RCW 9.05.160 (Liability of editors and others) and 1909 c 249 s 313 & 1905 c 45 s 3.

Passed the Senate April 20, 1999.

Passed the House April 13, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 192

[Engrossed Senate Bill 5720]

REAL ESTATE RESEARCH CENTER

AN ACT Relating to real estate research; adding new sections to chapter 18.85 RCW; and providing expiration dates.

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.85 RCW to read as follows:

(1) A fee of ten dollars is created and shall be assessed on each real estate broker, associate broker, and salesperson originally licensed after October 1, 1999, and upon each renewal of a license with an expiration date after October 1, 1999, including renewals of inactive licenses.

(2) This section expires September 30, 2005.

NEW SECTION. Sec. 2. A new section is added to chapter 18.85 RCW to read as follows:

(1) The Washington real estate research account is created in the state treasury. All receipts from the fee under section 1 of this act shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of section 3 of this act.

(2) This section expires September 30, 2005.

NEW SECTION. Sec. 3. A new section is added to chapter 18.85 RCW to read as follows:

(1) The purpose of a real estate research center in Washington state is to provide credible research, value-added information, education services, and project-oriented research to real estate licensees, real estate consumers, real estate service providers, institutional customers, public agencies, and communities in Washington state and the Pacific Northwest region. The center may:

(a) Conduct studies and research on affordable housing and strategies to meet the affordable housing needs of the state;

(b) Conduct studies in all areas directly or indirectly related to real estate and urban or rural economics and economically isolated communities;

(c) Disseminate findings and results of real estate research conducted at or by the center or elsewhere, using a variety of dissemination media;

(d) Supply research results and educational expertise to the Washington state real estate commission to support its regulatory functions, as requested;

(e) Prepare information of interest to real estate consumers and make the information available to the general public, universities, or colleges, and appropriate state agencies;

(f) Encourage economic growth and development within the state of Washington;

(g) Support the professional development and continuing education of real estate licensees in Washington; and

(h) Study and recommend changes in state statutes relating to real estate.

(2) The director shall establish a memorandum of understanding with an institution of higher learning that establishes a real estate research center for the purposes under subsection (1) of this section.

(3) This section expires September 30, 2005.

Passed the Senate April 21, 1999.

Passed the House April 9, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 193

[Engrossed Senate Bill 5897]

CIGARETTES—LABELING

AN ACT Relating to the sale of export cigarettes; amending RCW 82.24.110, 82.24.130, and 82.24.145; adding a new section to chapter 82.24 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the policy of the state that manufacturers and importers of cigarettes not make any material misrepresentation of fact regarding the health consequences of using cigarettes, including compliance with applicable federal laws, regulations, and policies.

(4) It is the intent of the legislature to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 et seq.) and 26 U.S.C. Sec. 5754.

(5) The legislature finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States.

Sec. 2. RCW 82.24.110 and 1997 c 420 s 4 are each amended to read as follows:

(1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) To violate any of the provisions of this chapter;

(f) To violate any lawful rule made and published by the department of revenue or the board;

(g) To use any stamps more than once;

(h) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(i) Except as provided in this chapter, for any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(j) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(k) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(l) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(m) For any person to possess or transport in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or

purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state;

(n) To possess, sell, or transport within this state any container or package of cigarettes that does not comply with this chapter.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter.

Sec. 3. RCW 82.24.130 and 1997 c 420 s 5 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; and any container or package of cigarettes possessed or held for sale that does not comply with this chapter.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, 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 subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or 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 and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler or retailer, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband.

Sec. 4. RCW 82.24.145 and 1987 c 496 s 4 are each amended to read as follows:

When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of section 5 of this act shall be destroyed.

NEW SECTION. **Sec. 5.** A new section is added to chapter 82.24 RCW to read as follows:

(1) No stamp may be affixed to, or made upon, any container or package of cigarettes if:

(a) The container or package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 et seq.)

for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States;

(b) The container or package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(c) The container or package, including a container of individually stamped containers or packages, is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(d) The container or package has been altered by adding or deleting the wording, labels, or warnings described in (a) or (c) of this subsection.

(2) In addition to the penalty and forfeiture provisions otherwise provided for in this chapter, a violation of this section is a deceptive act or practice under the consumer protection act, chapter 19.86 RCW.

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 takes effect immediately.

Passed the Senate April 22, 1999.

Passed the House April 7, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 194

[Senate Bill 5911]

SCHOOL DIRECTORS—RESIDENCY AND ELECTIONS

AN ACT Relating to school director positions, residency, and vacancies; and adding a new section to chapter 28A.315 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.315 RCW to read as follows:

Notwithstanding RCW 42.12.010(4), a school director elected from a director district may continue to serve as a director from the district even though the director no longer resides in the director district, but continues to reside in the school district, under the following conditions:

(1) If, as a result of redrawing the director district boundaries, the director no longer resides in the director district, the director shall retain his or her position for the remainder of his or her term of office; and

(2) If, as a result of the director changing his or her place of residence the director no longer resides in the director district, the director shall retain his or her position until a successor is elected and assumes office as follows: (a) If the

change in residency occurs after the opening of the regular filing period provided under RCW 29.15.020, in the year two years after the director was elected to office, the director shall remain in office for the remainder of his or her term of office; or (b) if the change in residency occurs prior to the opening of the regular filing period provided under RCW 29.15.020, in the year two years after the director was elected to office, the director shall remain in office until a successor assumes office who has been elected to serve the remainder of the unexpired term of office at the school district general election held in that year.

Passed the Senate April 22, 1999.

Passed the House April 8, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 195

[Senate Bill 6025]

PURCHASES FOR RESALE BY INSTITUTIONS OF HIGHER EDUCATION—SEALED BIDDING UNNECESSARY

AN ACT Relating to purchases for resale by institutions of higher education; and amending RCW 43.19.1906.

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

Sec. 1. RCW 43.19.1906 and 1995 c 269 s 1404 are each amended to read as follows:

Insofar as practicable, all purchases and sales shall be based on competitive bids, and a formal sealed bid procedure shall be used as standard procedure for all purchases and contracts for purchases and sales executed by the state purchasing and material control director and under the powers granted by RCW 43.19.190 through 43.19.1939. This requirement also applies to purchases and contracts for purchases and sales executed by agencies, including educational institutions, under delegated authority granted in accordance with provisions of RCW 43.19.190 or under RCW 28B.10.029. However, formal sealed bidding is not necessary for:

(1) Emergency purchases made pursuant to RCW 43.19.200 if the sealed bidding procedure would prevent or hinder the emergency from being met appropriately;

(2) Purchases not exceeding thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management: **PROVIDED**, That the state director of general administration shall establish procedures to assure that purchases made by or on behalf of the various state agencies shall not be made so as to avoid the thirty-five thousand dollar bid limitation, or subsequent bid limitations as calculated by the office of financial management: **PROVIDED FURTHER**, That the state purchasing and material control director is authorized to reduce the formal sealed bid limits of thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, to a lower dollar amount for purchases by individual state agencies if considered necessary to maintain full

disclosure of competitive procurement or otherwise to achieve overall state efficiency and economy in purchasing and material control. Quotations from four hundred dollars to thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. The agency shall invite at least one quotation each from a certified minority and a certified women-owned vendor who shall otherwise qualify to perform such work. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry. A record of competition for all such purchases from four hundred dollars to thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be documented for audit purposes. Purchases up to four hundred dollars may be made without competitive bids based on buyer experience and knowledge of the market in achieving maximum quality at minimum cost: PROVIDED, That this four hundred dollar direct buy limit without competitive bids may be increased incrementally as required to a maximum of eight hundred dollars, if warranted by increases in purchasing costs due to inflationary trends;

(3) 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;

(4) Purchases of insurance and bonds by the risk management office under RCW 43.19.1935;

(5) Purchases and contracts for vocational rehabilitation clients of the department of social and health services: PROVIDED, That this exemption is effective only when the state purchasing and material control director, after consultation with the director of the division of vocational rehabilitation and appropriate department of social and health services procurement personnel, declares that such purchases may be best executed through direct negotiation with one or more suppliers in order to expeditiously meet the special needs of the state's vocational rehabilitation clients;

(6) Purchases by universities for hospital operation or biomedical teaching or research purposes and by 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, made by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations;

(7) Purchases for resale by institutions of higher education to other than public agencies when such purchases are for the express purpose of supporting instructional programs and may best be executed through direct negotiation with one or more suppliers in order to meet the special needs of the institution;

(8) Purchases by institutions of higher education not exceeding thirty-five thousand dollars: PROVIDED, That for purchases between two thousand five hundred dollars and thirty-five thousand dollars quotations shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both. For purchases between two thousand five hundred dollars and thirty-five thousand dollars, each institution of higher education shall invite at least one quotation each from a certified minority and a certified women-owned vendor who shall otherwise qualify to perform such work. A record of competition for all such purchases made from two thousand five hundred to thirty-five thousand dollars shall be documented for audit purposes; and

((8)) (9) Beginning on July 1, 1995, and on July 1 of each succeeding odd-numbered year, the dollar limits specified in this section shall be adjusted as follows: The office of financial management shall calculate such limits by adjusting the previous biennium's limits by the appropriate federal inflationary index reflecting the rate of inflation for the previous biennium. Such amounts shall be rounded to the nearest one hundred dollars.

Passed the Senate April 22, 1999.

Passed the House April 9, 1999.

Approved by the Governor May 5, 1999.

Filed in Office of Secretary of State May 5, 1999.

CHAPTER 196

[Engrossed Second Substitute Senate Bill 5421]

COMMUNITY CUSTODY

AN ACT Relating to the supervision of offenders in the community; amending RCW 9.94A.010, 9.94A.030, 9.94A.110, 9.94A.120, 9.94A.170, 9.94A.205, 9.94A.207, 9.94A.383, 9.94A.440, and 9A.44.135; reenacting and amending RCW 9.94A.040 and 9.94A.145; adding new sections to chapter 72.09 RCW; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9.94A.010 and 1981 c 137 s 1 are each amended to read as follows:

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to ((add a new chapter to Title 9 RCW designed to)):

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; ((and))

- (6) Make frugal use of the state's and local governments' resources; and
 (7) Reduce the risk of reoffending by offenders in the community.

Sec. 2. RCW 9.94A.030 and 1998 c 290 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) "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, either directly or through a collection agreement authorized by RCW 9.94A.145, 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~~) offender's sentence of confinement in lieu of earned (~~early~~) release time or imposed pursuant to RCW 9.94A.120 ~~(5), (6), (7), (8), ((or)) (10), or (11), or RCW 9.94A.383,~~ served in the community subject to controls placed on the (~~inmate's~~) offender's movement and activities by the department of corrections. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(5) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.120(11), as established by the sentencing guidelines commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

~~(6)~~ (6) "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))~~ (7) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

~~((7))~~ (8) "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 16.52.200(6) or 46.61.524. 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))~~ (9) "Confinement" means total or partial confinement as defined in this section.

~~((9))~~ (10) "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))~~ (11) "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. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in RCW 38.52.430.

~~((11))~~ (12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

~~((12))~~ (13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing judge that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

~~((14))~~ (15) "Day reporting" means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions, and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

~~((15))~~ (16) "Department" means the department of corrections.

~~((16))~~ (17) "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.

~~((17))~~ (18) "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.

~~((18))~~ (19) "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.

~~((19))~~ (20) "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.

~~((20))~~ (21) "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.

~~((21))~~ (22) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

~~((22))~~ (23) "First-time offender" means any person who is convicted of a felony (a) not classified as a violent offense or a sex offense under this chapter, or

(b) 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 flunitrazepam classified in Schedule IV, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, 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.

~~((23))~~ (24) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(25) "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 December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-

of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

~~((24))~~ (26) "Nonviolent offense" means an offense which is not a violent offense.

~~((25))~~ (27) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((26))~~ (28) "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.

~~((27))~~ (29) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.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; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first

degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (~~((27))~~) (29)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under subsection (~~((27))~~) (29)(b)(i) only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under subsection (~~((27))~~) (29)(b)(i) only when the offender was eighteen years of age or older when the offender committed the offense.

~~((28))~~ (30) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((29))~~ (31) "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.

~~((30))~~ (32) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(33) "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.

~~((31))~~ (34) "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, manslaughter in the first 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.

~~((32))~~ (35) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((33))~~ (36) "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 a felony 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 13.40.135; 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.

~~((34))~~ (37) "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.

~~((35))~~ (38) "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.

~~((36))~~ (39) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((37))~~ (40) "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.

~~((38))~~ (41) "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, drive-by shooting, 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.

~~((39))~~ (42) "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 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 or the state, or sanctioned under RCW 9.94A.205, are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection ~~((33))~~ (36) of this section are not eligible for the work crew program.

~~((40))~~ (43) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((41))~~ (44) "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.

~~((42) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.)~~

Sec. 3. RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are each reenacted and amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The office of the administrator for the courts shall provide the commission with available data on diversion and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness category XIII under RCW 9.94A.310, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.120(1) for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

Sec. 4. RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read as follows:

Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

The court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

Sec. 5. RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned ~~((early))~~ release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5)~~(a)~~ 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))~~ a term of community supervision or community custody as specified in (b) of this subsection, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- ~~((a))~~ (i) Devote time to a specific employment or occupation;
- ~~((b))~~ (ii) Undergo available outpatient treatment for up to ~~((two years))~~ the period specified in (b) of this subsection, or inpatient treatment not to exceed the standard range of confinement for that offense;
- ~~((c))~~ (iii) Pursue a prescribed, secular course of study or vocational training;
- ~~((d))~~ (iv) 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))~~ (v) Report as directed to ~~((the court and))~~ a community corrections officer; or

~~((#))~~ (vi) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(b) The terms and statuses applicable to sentences under (a) of this subsection are:

(i) For sentences imposed on or after the effective date of this section, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(ii) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this subsection (5) is subject to conditions and sanctions as authorized in this subsection (5) and in subsection (11)(b) and (c) of this section.

(c) The department shall discharge from community supervision any offender sentenced under this subsection (5) before the effective date of this section who has served at least one year of community supervision and has completed any treatment ordered by the court.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) The offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less,

no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

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

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

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

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement((:)); community service work; until July 1, 2000, a term of community supervision not to exceed one year((:)) and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in subsection (1)(b) and (c) of this section; and/or other legal financial obligations. The court may impose a sentence which provides more

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

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

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

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

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

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

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex 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 eleven 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 custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection ~~((14))~~ (15) of this section;

(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; and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned (~~early~~) release time while serving a suspended sentence.

(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 custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The 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 custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) 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.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

(ix) For purposes of this subsection (8), "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.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

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

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

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

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

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

(iv) Undergo available outpatient treatment.

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

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

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

(d) Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

(9)(a)(i) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, but before the effective date of this section, 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.

(ii) Except for persons sentenced under (b) of this subsection or subsection (10)(a) of this section, when a court sentences a person to a term of total confinement to the custody of the department of corrections for a violent offense,

any crime against a person under RCW 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after the effective date of this section but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this subsection (9)(a)(ii) 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 committed on or after July 1, 1990, but before June 6, 1996, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, but before July 1, 2000, 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 possess or consume controlled substances except pursuant to lawfully issued prescriptions;

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

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

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

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

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

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

(iv) The offender shall not consume alcohol;

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

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

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

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned (~~early~~) release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned (~~early~~) release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (~~((14))~~) (15) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW

9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(1)(a) When a court sentences a person to the custody of the department of corrections for a sex offense, a violent offense, any crime against a person under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in subsection (9)(b)(i) through (vi) of this section. The conditions may also include those provided for in subsection (9)(c)(i) through (vi) of this section. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to (f) of this subsection. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(c) If an offender violates conditions imposed by the court or the department pursuant to this subsection during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.

(d) Except for terms of community custody under subsection (8) of this section, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(e) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable

sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(f) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (11)(f).

(g) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (i) The crime of conviction; (ii) the offender's risk of reoffending; or (iii) the safety of the community.

(12) 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.

~~((12))~~ (13) 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 for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. 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 unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. 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.

~~((13))~~ (14) 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, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

~~((14))~~ (15) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(a) The instructions shall include, at a minimum, 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.

(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may additionally require the offender to participate in rehabilitative programs or otherwise perform affirmative conduct, and to obey all laws.

The conditions authorized under this subsection ~~((14))~~ (15)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of ~~((a-sex))~~ an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) or (11) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) or (11)(e) of this section.

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

~~((15))~~ (16) All offenders sentenced to terms involving community supervision, community service, community custody, 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.

~~((16))~~ (17) 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.

~~((17))~~ (18) 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).

~~((18))~~ (19) 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.

~~((19))~~ (20) 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.

~~((20))~~ (21) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

~~((21))~~ (22) 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.

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

(24)(a) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this section shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified providers are available for treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; (iii) the evaluation and treatment plan comply with the rules adopted by the department of health; or (iv) the treatment provider is employed by the department. A treatment provider selected by an offender who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.

(b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

Sec. 6. RCW 9.94A.145 and 1997 c 121 s 5 and 1997 c 52 s 3 are each reenacted and amended to read as follows:

(1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, after restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay

for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department of corrections.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be immediately issued. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and the victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. 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.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to truthfully and honestly respond to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring any and all documents as requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. Also, during the period of supervision, the offender may be required at the request of the department to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to truthfully and honestly respond to all questions concerning earning capabilities and the location and nature of all property or financial assets. Also, the offender is required to bring any and all documents as requested by the department in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department shall for any period of supervision be authorized to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purposes of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.2001.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties as provided in RCW 9.94A.200 for noncompliance.

(11) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with notice of payments by such offenders no less frequently than weekly.

(12) The department may arrange for the collection of unpaid legal financial obligations through the county clerk, or through another entity if the clerk does not assume responsibility for collection. The costs for collection services shall be paid by the offender.

Sec. 7. RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read as follows:

(1) A term of confinement ~~((, including community custody,))~~ ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented ~~((him))~~ himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) A term of ~~((supervision, including postrelease supervision))~~ community custody ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose ~~((supervision))~~ community custody the offender has been placed.

(3) Any period of ~~((supervision))~~ community custody shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is later found not to have violated a condition or requirement of ~~((supervision))~~ community custody, time spent in confinement due to such detention shall not toll ~~((to [the]))~~ the period of ((supervision)) community custody.

(4) For confinement or ~~((supervision))~~ community custody sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or ~~((supervision))~~ community custody.

Sec. 8. RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read as follows:

(1) If an ~~((inmate))~~ offender violates any condition or requirement of community custody, the department may transfer the ~~((inmate))~~ offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.120(8) who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.120(10) who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned ~~((early))~~ release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under RCW 9.94A.120 (5), (7), or (11), or under RCW 9.94A.383, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under RCW 9.94A.120(9)(a)(ii) who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(3) If an ~~((inmate))~~ offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as ~~((inmate))~~ offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after

notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

Sec. 9. RCW 9.94A.207 and 1996 c 275 s 4 are each amended to read as follows:

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.195. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.195.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this

section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution.

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.205(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under RCW 9.94A.205(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under RCW 9.94A.205(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned (~~early~~) release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned (~~early~~) release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under RCW 9.94A.205(2) (c) or (d) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

Sec. 10. RCW 9.94A.383 and 1988 c 143 s 23 are each amended to read as follows:

On all sentences of confinement for one year or less, the court may impose up to one year of community (~~supervision~~) custody, subject to conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and (c). An offender shall be on community (~~supervision~~) custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community (~~supervision~~) custody shall toll.

Sec. 11. RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read as follows:

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution

would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

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

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

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

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

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

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

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

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

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

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

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

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

(ii) Conviction in the pending prosecution is imminent;

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

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

(f) **High Disproportionate Cost of Prosecution** - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense

in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

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

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

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

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

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

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

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

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

Notification

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

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.120(8).

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

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder
1st Degree Murder
2nd Degree Murder
1st Degree Kidnaping
1st Degree Assault
1st Degree Assault of a Child
1st Degree Rape
1st Degree Robbery
1st Degree Rape of a Child
1st Degree Arson
2nd Degree Kidnaping
2nd Degree Assault
2nd Degree Assault of a Child
2nd Degree Rape
2nd Degree Robbery
1st Degree Burglary
1st Degree Manslaughter
2nd Degree Manslaughter
1st Degree Extortion
Indecent Liberties
Incest
2nd Degree Rape of a Child
Vehicular Homicide
Vehicular Assault
3rd Degree Rape
3rd Degree Rape of a Child
1st Degree Child Molestation
2nd Degree Child Molestation
3rd Degree Child Molestation
2nd Degree Extortion
1st Degree Promoting Prostitution
Intimidating a Juror
Communication with a Minor
Intimidating a Witness
Intimidating a Public Servant
Bomb Threat (if against person)
3rd Degree Assault
3rd Degree Assault of a Child
Unlawful Imprisonment
Promoting a Suicide Attempt
Riot (if against person)

Stalking

Custodial Assault

No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b) and (c))

No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))

Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and (5))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson

1st Degree Escape

2nd Degree Burglary

1st Degree Theft

1st Degree Perjury

1st Degree Introducing Contraband

1st Degree Possession of Stolen Property

Bribery

Bribing a Witness

Bribe received by a Witness

Bomb Threat (if against property)

1st Degree Malicious Mischief

2nd Degree Theft

2nd Degree Escape

2nd Degree Introducing Contraband

2nd Degree Possession of Stolen Property

2nd Degree Malicious Mischief

1st Degree Reckless Burning

Taking a Motor Vehicle without Authorization

Forgery

2nd Degree Perjury

2nd Degree Promoting Prostitution

Tampering with a Witness

Trading in Public Office

Trading in Special Influence

Receiving/Granting Unlawful Compensation

Bigamy

Eluding a Pursuing Police Vehicle

Willful Failure to Return from Furlough

Escape from Community Custody

Riot (if against property)

Thefts of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

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

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

((b)) (B) Will result in restitution to all victims.

((2)) (ii) The prosecutor should not overcharge to obtain a guilty plea.

Overcharging includes:

((a)) (A) Charging a higher degree;

((b)) (B) Charging additional counts.

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

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

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

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

((2)) (B) The completion of necessary laboratory tests; and

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

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

(ii) Exceptions

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

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

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

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

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

(iii) Investigation Techniques

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

((+)) (A) Polygraph testing;

- ((2)) (B) Hypnosis;
 ((3)) (C) Electronic surveillance;
 ((4)) (D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

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

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

NEW SECTION. Sec. 12. A new section is added to chapter 72.09 RCW to read as follows:

Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitoring compliance with conditions of community custody, community placement, or community supervision as authorized under RCW 9.94A.120 and 9.94A.383, the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports; evaluations and assessments, and reports of violations of conditions imposed by the court or the department.

NEW SECTION. Sec. 13. A new section is added to chapter 72.09 RCW to read as follows:

To the extent practicable, the department shall deploy community corrections staff on the basis of geographic areas in which offenders under the department's jurisdiction are located, and shall establish a systematic means of assessing risk to the safety of those communities.

NEW SECTION. Sec. 14. The secretary of corrections may adopt rules to implement sections 1 through 13 of this act.

Sec. 15. RCW 9A.44.135 and 1998 c 220 s 2 are each amended to read as follows:

(1) When an offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall notify the police chief or town marshal of the jurisdiction in which the offender has registered to live. If the offender registers to live in an unincorporated area of the county, the sheriff shall make reasonable

attempts to verify that the offender is residing at the registered address. If the offender registers to live in an incorporated city or town, the police chief or town marshal shall make reasonable attempts to verify that the offender is residing at the registered address. Reasonable attempts at verifying an address shall include at a minimum:

(a) Each year the ~~((county sheriff))~~ chief law enforcement officer of the jurisdiction where the offender is registered to live shall send by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address.

(b) The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the ~~((county sheriff))~~ chief law enforcement officer of the jurisdiction where the offender is registered to live within ten days after receipt of the form.

(2) The ~~((sheriff))~~ chief law enforcement officer of the jurisdiction where the offender has registered to live shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address. If the offender fails to return the verification form or the offender is not at the last registered address, the ~~((county sheriff))~~ chief law enforcement officer of the jurisdiction where the offender has registered to live shall promptly forward this information to the county sheriff and to the Washington state patrol for inclusion in the central registry of sex offenders.

(3) When an offender notifies the county sheriff of a change to his or her residence address pursuant to RCW 9A.44.130, and the new address is in a different law enforcement jurisdiction, the county sheriff shall notify the police chief or town marshal of the jurisdiction from which the offender has moved.

NEW SECTION. **Sec. 16.** A new section is added to chapter 72.09 RCW to read as follows:

(1) The Washington state institute for public policy shall conduct a study of the effect of the use of community custody under this act. The study shall include the effect of this act on recidivism and other outcomes. In its study the institute shall consider:

(a) Recidivism, according to the definition adopted by the institute pursuant to section 59, chapter 338, Laws of 1997;

(b) The number and seriousness level of violations of conditions;

(c) The application of the graduated sanctions by the department;

(d) Unauthorized absences from supervision;

(e) Payment of legal financial obligations;

(f) Unlawful use of controlled substances;

(g) Use of alcohol when abstention or treatment for alcoholism is a condition of supervision;

(h) Effects on the number of offenders who are employed or participate in vocational rehabilitation;

(i) Participation in vocational and education programs; and

(j) Impact on the receipt of public assistance.

(2) By January 1, 2000, the institute shall report to the legislature on the design for the study. By January 1st of each year thereafter, the institute shall report to the legislature on the progress and findings of the study and make recommendations based on its findings. By January 1, 2010, the institute shall provide to the legislature a final report on the findings of the study.

(3) Subsections (1) and (2) of this section expire December 31, 2010.

NEW SECTION. Sec. 17. Nothing in this act shall be construed to create an immunity or defense from liability for personal injury or wrongful death based solely on availability of funds.

NEW SECTION. Sec. 18. This act may be known and cited as the offender accountability act.

NEW SECTION. Sec. 19. Section 10 of this act takes effect July 1, 2000, and applies only to offenses committed on or after July 1, 2000.

NEW SECTION. Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 22, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 6, 1999.

Filed in Office of Secretary of State May 6, 1999.

CHAPTER 197

[Engrossed Second Substitute House Bill 1006]

DRUG OFFENDERS—SENTENCING

AN ACT Relating to sentencing for crimes involving drugs or alcohol; amending RCW 9.94A.030, 9.94A.110, 9.94A.120, and 9.94A.137; reenacting and amending RCW 9.94A.380; adding a new section to chapter 9.94A RCW; adding a new section to chapter 10.01 RCW; adding a new section to chapter 2.28 RCW; adding a new section to chapter 70.96A RCW; creating new sections; and prescribing penalties.

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

Sec. 1. RCW 9.94A.030 and 1998 c 290 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) "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 or imposed pursuant to RCW 9.94A.120 (6), (8), or (10) 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 16.52.200(6) or 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. 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. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in RCW 38.52.430.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

(13) "Day fine" means a fine imposed by the sentencing judge that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(14) "Day reporting" means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions, and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

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

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

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

(22) "First-time offender" means any person who is convicted of a felony (a) not classified as a violent offense or a sex offense under this chapter, or (b) 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 flunitrazepam classified in Schedule IV, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, 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.

(23) "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 December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

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

(25) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(26) "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.

(27) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.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; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (27)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under subsection (27)(b)(i) only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under subsection (27)(b)(i) only when the offender was eighteen years of age or older when the offender committed the offense.

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

(29) "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.

(30) "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.

(31) "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, manslaughter in the first 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.

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

(33) "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 a felony 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 13.40.135; 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.

(34) "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.

(35) "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.

(36) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(37) "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.

(38) "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, drive-by shooting, 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.

(39) "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 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 or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (33) of this section are not eligible for the work crew program.

(40) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(41) "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.

(42) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW to read as follows:

(1) Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences.

Sec. 3. RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read as follows:

Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

Sec. 4. RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

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

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;

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

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

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of ~~((the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or H that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;))~~ a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no current or prior convictions for a ((felony)) sex offense or violent offense in this state, another state, or the United States; ~~((and))~~

(iii) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

(iv) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order.

(b) If the ~~((midpoint of the))~~ standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. ~~((If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work-release status;))~~

The court shall also impose ~~((one year of concurrent community custody and community supervision that));~~

(i) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate ((outpatient)) substance abuse

treatment((;)) in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(ii) Crime-related prohibitions including a condition not to use illegal controlled substances((;)); and

(iii) A requirement to submit to urinalysis or other testing to monitor that status.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

((#)) (A) Devote time to a specific employment or training;

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

((##)) (C) Report as directed to a community corrections officer;

((#)) (D) Pay all court-ordered legal financial obligations;

((#)) (E) Perform community service work;

((#)) (F) Stay out of areas designated by the sentencing judge;

(G) Such other conditions as the court may require such as affirmative conditions.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, ~~((the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney,))~~ a violation hearing shall be held by the ~~((court))~~ department unless waived by the offender. If the ~~((court))~~ department finds that conditions have been willfully violated, the ~~((court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court))~~ offender may be reclassified to serve the remaining balance of the original sentence.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(c) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned early release time.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

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

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

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

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

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

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex 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 eleven 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 custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section;

(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; and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned early release time while serving a suspended sentence.

(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 custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The 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 custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) 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.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

(ix) For purposes of this subsection (8), "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.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

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

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

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

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

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

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

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and

(2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

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

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

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

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

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

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

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

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

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

(iv) The offender shall not consume alcohol;

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

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

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

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11) 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.

(12) 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 for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. 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 unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. 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.

(13) 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.

(14) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(a) The instructions shall include, at a minimum, 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.

(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. The conditions

authorized under this subsection (14)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of a sex offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) of this section.

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(15) 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.

(16) 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.

(17) 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).

(18) 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.

(19) 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.

(20) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(21) 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.

(22) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 5. RCW 9.94A.137 and 1995 1st sp.s. c 19 s 20 are each amended to read as follows:

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than ~~((sixteen))~~ twelve months and one day or more than thirty-six months; ~~((and))~~

(ii) Has no current or prior convictions for any sex offenses or for violent offenses ~~((other than drug offenses for manufacturing, possession, delivery, or intent to deliver a controlled substance)); and~~

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of the uniform controlled substances act or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days. ~~((Because of the conversion ratio, earned early release time shall not accrue to offenders who successfully complete the program.))~~

(2) If the sentencing judge determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard range and may recommend that the offender serve the sentence at a work ethic camp. ~~((The sentence shall provide that if the offender successfully completes the program, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp confinement to three days of total standard confinement.))~~ In sentencing an

offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by RCW 9.94A.120(9)(b) and authorized by RCW 9.94A.120(9)(c); and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; ~~((or))~~ (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

Sec. 6. RCW 9.94A.380 and 1988 c 157 s 4 and 1988 c 155 s 3 are each reenacted and amended to read as follows:

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community service may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to section 2 of this act.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall

state its reasons in writing on the judgment and sentence form if the alternatives are not used.

NEW SECTION. Sec. 7. The legislature recognizes the utility of drug court programs in reducing recidivism and assisting the courts by diverting potential offenders from the normal course of criminal trial proceedings.

***NEW SECTION. Sec. 8.** *A new section is added to chapter 10.01 RCW to read as follows:*

(1) The superior and district courts of Washington may establish drug court programs to accept offenders that have been diverted by the courts from the normal course of prosecution for drug offenses.

(2) Pursuant to this section, "drug court" is defined as a program that meets the criteria set forth in section 9 of this act.

**Sec. 8 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 9. A new section is added to chapter 2.28 RCW to read as follows:

(1) Counties may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

(3) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(a) Exhaust all federal funding received from the office of national drug control policy that is available to support the operations of its drug court and associated services; and

(b) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services.

NEW SECTION. Sec. 10. A new section is added to chapter 70.96A RCW to read as follows:

The department shall contract with counties operating drug courts and counties in the process of implementing new drug courts for the provision of drug and alcohol treatment services.

NEW SECTION. Sec. 11. The department of corrections must develop criteria for successful completion of the special drug offender sentencing alternative program by December 31, 1999.

NEW SECTION. Sec. 12. The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW

9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates.

NEW SECTION. Sec. 13. If specific funding for the purposes of sections 7 through 12 of this act, referencing sections 7 through 12 of this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, sections 7 through 12 of this act are null and void.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 23, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 7, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 7, 1999.

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

"I am returning herewith, without my approval as to section 8, Engrossed Second Substitute House Bill No. 1006 entitled:

"AN ACT Relating to sentencing for crimes involving drugs or alcohol;"

Section 8 of E2SHB 1006 would authorize District and Superior Courts to establish drug court programs for "offenders that have been diverted by the courts from the normal course of prosecution for drug offenses." This section is not necessary to the operation of the bill, and violates the separation of powers doctrine. The courts, as a separate branch of government, already have authority to establish programs like these, and are in fact now operating them in several counties. Additionally, including District Courts in this section could imply that the state would fund drug court programs established by those courts. Funding of District Court programs has not been specifically discussed in the legislature. Finally, the reference in section 8 to "drug offenders" could imply that state funding cannot be provided to programs serving drug-addicted nonviolent property offenders, as some now do.

For these reasons, I have vetoed section 8 of Engrossed Second Substitute House Bill No. 1006.

With the exception of section 8, Engrossed Second Substitute House Bill No. 1006 is approved."

CHAPTER 198

[Substitute House Bill 1153]

STUDENT SAFETY—NOTIFICATION OF VIOLENT BEHAVIOR

AN ACT Relating to the sharing of information relating to student safety; and amending RCW 13.40.215, 28A.225.225, 28A.225.330, and 13.50.050.

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

Sec. 1. RCW 13.40.215 and 1997 c 265 s 2 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before 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;

(ii) The sheriff of the county in which the juvenile will reside; and

(iii) The approved private schools and the common school district board of directors of the district in which the juvenile intends to reside or the approved private school or public school district in which the juvenile last attended school, whichever is appropriate, except when it has been determined by the department that the juvenile is twenty-one years old (~~is not required to return to school under chapter 28A.225 RCW;~~) or will be in the community for less than seven consecutive days on approved leave and will not be attending school during that time.

(b) After ~~((July 27, 1997))~~ the effective date of this section, the department shall send a written notice to approved private and public schools under the same conditions identified in subsection (1)(a)(iii) of this section when a juvenile adjudicated of any offense is transferred to a community residential facility, discharged, paroled, released, or granted a leave. The community residential facility shall provide written notice of the offender's criminal history to any school that the offender attends while residing at the community residential facility and to any employer that employs the offender while residing at the community residential facility.

(c) 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.

(d) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical furloughs.

(e) 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) Upon discharge, parole, transfer to a community residential facility, or other authorized leave or release, a convicted juvenile sex offender shall not attend a public or approved private elementary, middle, or high school that is attended by a victim or a sibling of 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, transfer to

a community residential facility, 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. The secretary shall send a similar notice to any approved private school the juvenile will attend, if known, or if unknown, to the approved private schools within the district the juvenile resides or intends to reside.

(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.

Sec. 2. RCW 28A.225.225 and 1997 c 265 s 3 are each amended to read as follows:

(1) All districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership; or

(c) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (1)(c) must apply uniformly to both resident and nonresident applicants.

For purposes of subsection (1)(b) of this section, "gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(2) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3).

Sec. 3. RCW 28A.225.330 and 1997 c 266 s 4 are each amended to read as follows:

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior, or behavior listed in RCW 13.04.155;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. If the student has not paid a fine or fee under RCW 28A.635.060, or tuition, fees, or fines at approved private schools the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, immunization records, ~~((and))~~ records of disciplinary action, and history of violent behavior or behavior listed in RCW 13.04.155. If the official transcript is not sent due to unpaid tuition, fees, or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The state board of education shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

(4) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

(5) When a school receives information under this section or RCW 13.40.215 that a student has a history of disciplinary actions, criminal or violent behavior, or other behavior that indicates the student could be a threat to the safety of educational staff or other students, the school shall provide this information to the student's teachers and security personnel.

Sec. 4. RCW 13.50.050 and 1997 c 338 s 40 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection ~~((+))~~ (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

~~((8))~~ (9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

~~((9))~~ (10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

~~((10))~~ (11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection ~~((22))~~ (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

~~((11))~~ (12) The court shall grant the motion to seal records made pursuant to subsection ~~((10))~~ (11) of this section if it finds that:

(a) For class B offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent ten consecutive years in the community without committing any offense or crime that subsequently results in conviction. For class C offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in conviction;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(c) No proceeding is pending seeking the formation of a diversion agreement with that person;

(d) The person has not been convicted of a class A or sex offense; and

(e) Full restitution has been paid.

~~((12))~~ (13) The person making a motion pursuant to subsection ~~((10))~~ (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

~~((13))~~ (14) If the court grants the motion to seal made pursuant to subsection ~~((10))~~ (11) of this section, it shall, subject to subsection ~~((22))~~ (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

~~((14))~~ (15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the

person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection ~~((22))~~ (23) of this section.

~~((15))~~ (16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW.

~~((16))~~ (17) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted, subject to subsection ~~((22))~~ (23) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

~~((17))~~ (18) If the court grants the motion to destroy records made pursuant to subsection ~~((16))~~ (17) of this section, it shall, subject to subsection ~~((22))~~ (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

~~((18))~~ (19) The person making the motion pursuant to subsection ~~((16))~~ (17) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

~~((19))~~ (20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

~~((20))~~ (21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

~~((21))~~ (22) Any juvenile justice or care agency may, subject to the limitations in subsection ~~((22))~~ (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older, or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

~~((22))~~ (23) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion,

conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

~~((23))~~ (24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault.

Passed the House April 20, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 199

[Substitute House Bill 1212]

DRIVER'S LICENSES—OUT OF STATE RENEWALS

AN ACT Relating to the extension of the validity of a driver's license that expires while the driver is outside the state or where the driver is a spouse or dependent child of a member of the armed forces; amending RCW 46.20.027, 46.20.116, and 46.20.120; creating a new section; and declaring an emergency

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

Sec. 1. RCW 46.20.027 and 1967 c 129 s 1 are each amended to read as follows:

A Washington state motor vehicle driver's license issued to any person serving in the armed forces of the United States, is valid and in force and effect while such person is serving in the armed forces, shall remain in full force and effect so long as such service continues unless the same is sooner suspended, canceled, or revoked for cause as provided by law and for not to exceed ninety days following the date on which the holder of such driver's license is honorably separated from service in the armed forces of the United States. A Washington state driver's license issued to the spouse or dependent child of such service member likewise remains in full force and effect if the person is residing with the service member.

***Sec. 2.** RCW 46.20.116 and 1993 c 452 s 2 are each amended to read as follows:

The department shall plainly label each license "not valid for identification purposes" where:

(1) The applicant is unable to prove his or her identity as provided in RCW 46.20.035; or

(2) The applicant is renewing his or her license by mail under RCW 46.20.120 and the department does not have a digital (reproducible) photograph on file.

*Sec. 2 was vetoed. See message at end of chapter.

Sec. 3. RCW 46.20.120 and 1990 c 9 s 1 are each amended to read as follows:
 ((No new driver's license may be issued and no previously issued license may be renewed until the applicant therefor has successfully passed)) An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department shall give examinations at places and times reasonably available to the people of this state.
 ((However,;))

(1) Waiver. The department may waive;

(a) All or any part of the examination of any person applying for the renewal of a driver's license ((except when)) unless the department determines that ((an)) the applicant ((for a driver's license)) is not qualified to hold a driver's license under this title((-The department may also waive;)); or

(b) The actual demonstration of the ability to operate a motor vehicle ((by a person who)) if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; and ((who))

(ii) Is otherwise qualified to be licensed. ((For a new license))

(2) Fee. Each applicant for a new license must pay an examination ((a)) fee of seven dollars ((shall be paid by each applicant;)).

(a) The examination fee is in addition to the fee charged for issuance of the license.

((A)) (b) "New license ((is one))" means a license issued to a driver;

(i) Who has not been previously licensed in this state; or ((to a driver))

(ii) Whose last previous Washington license has been expired for more than four years.

~~((Any person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee under RCW 46.20.181. The penalty fee shall be deposited in the highway safety fund.~~

~~— Any person who is outside the state at the time his or her driver's license expires or who is unable to renew the license due to any incapacity may renew the license within sixty days after returning to this state or within sixty days after the termination of any such incapacity without the payment of the penalty fee.~~

~~— The department shall provide for giving examinations at places and times reasonably available to the people of this state.))~~

(3) A person whose license expired or will expire on or after January 1, 1998, while he or she was or is living outside the state may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction

that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail. If a person qualifies for a mail-in renewal he or she is not required to pass an examination nor provide an updated photograph. He or she must, however, pay the fee required by RCW 46.20.181 plus an additional five-dollar mail-in renewal fee. A license renewed by mail that does not include a photograph of the licensee must be labeled "not valid for identification purposes."

(4) If a person's driver's license is extended or renewed under subsection (3) of this section while he or she is outside the state, he or she must submit to the examination required under this section within sixty days of returning to this state. The department will not assess a penalty or examination fee for the examination.

NEW SECTION. Sec. 4. (1) If the driver's license of a spouse or dependent of a member of the armed forces expired between January 1, 1998, and the effective date of this act and the department did not renew that person's license, the department shall:

- (a) Renew that person's license if otherwise allowable under this chapter;
- (b) Renew the license for an additional four-year term as otherwise provided under RCW 46.20.181; and
- (c) Waive the late renewal fee authorized under RCW 46.20.120.

(2) The department shall waive the late renewal fee authorized under RCW 46.20.120 for drivers who qualify for license renewal or extension under RCW 46.20.120(3) if the driver's license expired before the effective date of this act.

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

Passed the House February 19, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor May 7, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 7, 1999.

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. 1212 entitled:

"AN ACT Relating to the extension of the validity of a driver's license that expires while the driver is outside the state or where the driver is a spouse or dependent child of a member of the armed forces;"

Section 2 of Substitute House Bill No. 1212 would require that driver's licenses that are renewed by mail be labeled "not valid for identification purposes". However, Substitute House Bill No. 1294, which I signed on March 30, 1999, repealed the statute amended by section 2. Accordingly, section 2 is superfluous. Without this veto, the Code Reviser would be required to annotate RCW 46.20.116 indicating that the legislature both repealed and amended the same statute during its 1999 session. The legislature's intent would be unclear.

The concept of labeling driver's licenses as not valid for identification purposes when the Department of Licensing cannot take a current photograph was covered in SHB 1294, and will be law. This partial veto is purely ministerial.

For these reasons, I have vetoed section 2 of Substitute House Bill No. 1212.

With the exception of section 2, Substitute House Bill No. 1212 is approved."

CHAPTER 200

[House Bill 1321]

NONFUNCTIONING SIGNAL LIGHTS—ALL-WAY STOPS

AN ACT Relating to requiring stops at intersections with nonfunctioning signal lights; and adding a new section to chapter 46.61 RCW.

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:

Except when directed to proceed by a flagger, police officer, or fire fighter, the driver of a vehicle approaching an intersection controlled by a traffic control signal that is temporarily without power on all approaches or is not displaying any green, red, or yellow indication to the approach the vehicle is on, shall consider the intersection to be an all-way stop. After stopping, the driver shall yield the right of way in accordance with RCW 46.61.180(1) and 46.61.185.

Passed the House February 24, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 201

[House Bill 1322]

MOTORIST INFORMATION SIGNS

AN ACT Relating to motorist information signs; and amending RCW 47.36.005, 47.36.300, 47.36.310, 47.36.320, 47.36.330, 47.36.340, and 47.36.350.

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

Sec. 1. RCW 47.36.005 and 1991 c 94 s 3 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(2) "Interstate system" means a state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(d) of Title 23, United States Code.

(3) "Maintain" means to allow to exist.

(4) "Primary system" means a state highway that is or becomes part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(5) "Scenic system" means (a) a state highway within a public park, federal forest area, public beach, public recreation area, or national monument, (b) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic system, or (c) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(6) "~~(Specific)~~ Motorist information sign panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," ~~(or)~~ "LODGING," "CAMPING," "RECREATION," or "TOURIST ACTIVITIES" and directional information; and

(b) One or more individual business signs mounted on the panel.

(7) "Business sign" means a separately attached sign mounted on the ~~(specific)~~ motorist information sign panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Messages, trademarks, or brand symbols that interfere with, imitate, or resemble an official warning or regulatory traffic sign, signal, or device are prohibited.

(8) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(9) "Tourist-oriented directional sign" means a sign on a ~~(specific)~~ motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(10) "Qualified tourist-oriented business" means a lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(11) "Adopt-a-highway sign" means a sign on a state highway right of way referring to the departments' adopt-a-highway litter control program.

Sec. 2. RCW 47.36.300 and 1986 c 114 s 3 are each amended to read as follows:

(1) The legislative authority of any county, city, or town may erect, or permit the erection of, supplemental directional signs directing motorists to motorist service businesses qualified for ~~((specific))~~ motorist information sign panels pursuant to RCW 47.36.310 or 47.36.320 in any location on, or adjacent to, the right of way of any roads or streets within their jurisdiction.

(2) Appropriate fees may be charged to cover the cost of issuing permits, installation, or maintenance of such signs.

(3) Supplemental signs and their locations shall comply with all applicable provisions of this chapter, ~~((sections 131 and 315 of Title 23, United States Code))~~ the Manual on Uniform Traffic Control Devices, and such rules as may be adopted by the department ~~((including the manual on uniform traffic control devices for streets and highways))~~.

Sec. 3. RCW 47.36.310 and 1987 c 469 s 3 are each amended to read as follows:

The department is authorized to erect and maintain ~~((specific))~~ motorist information sign panels within the right of way of the interstate highway system to give the traveling public specific information as to gas, food, ~~((or))~~ lodging, camping, or tourist-oriented business available on a crossroad at or near an interchange. ~~((Specific))~~ Motorist information sign panels shall include the words "GAS," "FOOD," ~~((or))~~ "LODGING," "CAMPING," or "TOURIST ACTIVITIES" and directional information and may contain one or more individual business signs maintained on the panel. ~~((Specific))~~ Motorist information sign panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the ~~((provisions of Title 23 C.F.R. sec. 655.307(a))~~ Manual on Uniform Traffic Control Devices. The erection and maintenance of ~~((specific))~~ motorist information sign panels shall also conform to the ~~((national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23, United States Code))~~ Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of ~~((a state))~~ an interstate highway shall not be permitted to display its name, brand, or trademark on a ~~((specific))~~ motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign. The restriction for on-premise signs does not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural

interstate system. The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance, and may charge reasonable fees to recover costs for the erection and maintenance of the motorist information sign panels. ~~((The restriction for on-premise signs shall or apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system.))~~

Sec. 4. RCW 47.36.320 and 1986 c 114 s 2 are each amended to read as follows:

The department is authorized to erect and maintain ~~((specific))~~ motorist information sign panels within the right of way ~~of~~ ~~((both the primary system and the scenic system))~~ noninterstate highways to give the traveling public specific information as to gas, food, lodging, recreation, or ~~((lodging available off the primary or scenic highway))~~ tourist-oriented businesses accessible by way of highways intersecting the ~~((primary or scenic))~~ noninterstate highway. ~~((Such specific))~~ The motorist information sign panels ~~((and tourist-oriented directional signs shall be))~~ are permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the ~~((provisions of Title 23 C.F.R. secs. 655.308(a) and 655.309(a))~~ Manual on Uniform Traffic Control Devices. ~~((Specific))~~ Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "RECREATION," or ~~((LODGING))~~ TOURIST ACTIVITIES" and directional information and may contain one or more individual business signs maintained on the panel. The erection and maintenance of ~~((specific))~~ motorist information sign panels along ~~((primary or scenic))~~ noninterstate highways shall also conform to the ~~((national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23 United States Code))~~ Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation ~~((including the manual on uniform traffic control devices for streets and highways))~~. A motorist service or tourist-oriented business located within one mile of a ~~((state))~~ noninterstate highway shall not be permitted to display its name, brand, or trademark on a ~~((specific))~~ motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "LODGING," or "RECREATION" ~~((," or "LODGING" specific))~~ motorist information sign panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance, and may charge reasonable fees for the erection and maintenance of the motorist information sign panels.

Sec. 5. RCW 47.36.330 and 1985 c 142 s 3 are each amended to read as follows:

(1) Not more than six business signs may be permitted on ~~((specific))~~ motorist information sign panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On ~~((fully-controlled, limited-access))~~ interstate highways, gas, food, or lodging activities shall be located within three miles. Camping or tourist-oriented activities shall be within five miles.

(b) On noninterstate highways ~~((with partial access control or no access control)),~~ gas, food, lodging, ~~((or camping))~~ recreation, or tourist-oriented activities shall be located within five miles.

(3) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

Sec. 6. RCW 47.36.340 and 1985 c 376 s 8 are each amended to read as follows:

To be eligible for placement of a business sign on a ~~((specific))~~ motorist information sign panel a lodging activity shall:

(1) Be licensed or approved by the department of social and health services or county health authority;

(2) Provide adequate sleeping and bathroom accommodations available for rental on a daily basis; and

(3) Provide public telephone facilities.

Sec. 7. RCW 47.36.350 and 1991 c 94 s 5 are each amended to read as follows:

The department shall ensure that ~~((specific))~~ motorist information sign panels are installed within nine months of receiving the request for installation.

Passed the House March 9, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 202

[Substitute House Bill 1324]

RAIL FIXED GUIDEWAY SYSTEM—SAFETY AND SECURITY PROGRAM PLAN

AN ACT Relating to transportation safety and planning; amending RCW 81.104.015; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 36.01 RCW; adding a new section to chapter 36.57 RCW; adding a new section to chapter 36.57A RCW; adding a new section to chapter 81.112 RCW; adding a new section to chapter 81.104 RCW; adding a new section to chapter 42.17 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:

(1) Each city or town that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the city or town shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each city or town shall implement and comply with its system safety and security program plan. The city or town shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The city or town shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each city or town shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The city or town shall investigate all reportable accidents, unacceptable

hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

NEW SECTION. Sec. 2. A new section is added to chapter 35A.21 RCW to read as follows:

(1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the code city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each code city shall implement and comply with its system safety and security program plan. The code city shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The code city shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each code city shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The code city shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW.

However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

NEW SECTION. Sec. 3. A new section is added to chapter 36.01 RCW to read as follows:

(1) Each county functioning under chapter 36.56 RCW that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety and security program plan. The county shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each county shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

NEW SECTION. Sec. 4. A new section is added to chapter 36.57 RCW to read as follows:

(1) Each county transportation authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county transportation authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county transportation authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each county transportation authority shall implement and comply with its system safety and security program plan. The county transportation authority shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county transportation authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each county transportation authority shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county transportation authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

NEW SECTION. Sec. 5. A new section is added to chapter 36.57A RCW to read as follows:

(1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or

instituting revisions to its plan. This plan must describe the public transportation benefit area's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each public transportation benefit area shall implement and comply with its system safety and security program plan. The public transportation benefit area shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The public transportation benefit area shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each public transportation benefit area shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The public transportation benefit area shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

NEW SECTION. Sec. 6. A new section is added to chapter 81.112 RCW to read as follows:

(1) Each regional transit authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual

safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the regional transit authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each regional transit authority shall implement and comply with its system safety and security program plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The regional transit authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each regional transit authority shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The regional transit authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.17 RCW. However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

NEW SECTION. Sec. 7. A new section is added to chapter 81.104 RCW to read as follows:

(1) The department may collect and review the system safety and security program plan prepared by each owner or operator of a rail fixed guideway system. In carrying out this function, the department may adopt rules specifying the elements and standard to be contained in a system safety and security program plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from a reportable accident, unacceptable hazardous condition, or security breach. These rules may include due dates for the department's timely receipt of and response to required documents.

(2) The security section of the system safety and security plan as described in subsection (1)(d) of sections 1 through 6 of this act are exempt from public disclosure under chapter 42.17 RCW by the department when collected from the

owners and operators of fixed railway systems. However, the activities and plans as described in subsection (1)(a), (b), and (c) of sections 1 through 6 of this act are not exempt from public disclosure.

(3) The department shall audit each system safety and security program plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway system before commencing the audit.

(4) In the event of a reportable accident, unacceptable hazardous condition, or security breach, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway system to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident, unacceptable hazardous condition, or security breach.

(a) The department may, at its option, perform a separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach. The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

(5) The secretary may adopt rules to implement this section and sections 1 through 6 of this act, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with sections 1 through 6 of this act and the rules adopted under this section. If noncompliance by an owner or operator of a rail fixed guideway system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

(6) The department may impose sanctions upon owners and operators of rail fixed guideway systems, but only for failure to meet reasonable deadlines for submission of required reports and audits. The department is expressly prohibited from imposing sanctions for any other purposes, including, but not limited to, differences in format or content of required reports and audits.

(7) The department and its employees have no liability arising from the adoption of rules; the review of or concurrence in a system safety and security program plan; the separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach; and the review of or concurrence in a corrective action plan for a reportable accident, unacceptable hazardous condition, or security breach.

NEW SECTION. **Sec. 8.** A new section is added to chapter 42.17 RCW to read as follows:

The security section of transportation system safety and security program plans required under sections 1 through 6 of this act are exempt from disclosure under this chapter.

Sec. 9. RCW 81.104.015 and 1992 c 101 s 19 are each amended to read as follows:

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

(1) "High-capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights of way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

(2) "Rail fixed guideway system" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high-capacity transportation system that is not regulated by the Federal Railroad Administration, or its successor. "Rail fixed guideway system" does not mean elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system.

(3) "Regional transit system" means a high-capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high-capacity transportation system under the jurisdiction of a regional transit authority.

~~((3))~~ (4) "Transit agency" means city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas.

NEW SECTION. **Sec. 10.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House March 12, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 203

[Substitute House Bill 1345]

ASSISTED HOUSING—PROPERTY TAX EXEMPTION

AN ACT Relating to exemption of property taxes for assisted housing; reenacting and amending RCW 84.36.805 and 84.36.810; adding a new section to chapter 84.36 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 84.36 RCW to read as follows:

(1) The real and personal property owned or used by a nonprofit in providing rental housing for very low-income households is exempt from taxation if:

(a) The benefit of the exemption inures to the nonprofit organization, association, or corporation;

(b) At least seventy-five percent of the occupied dwelling units in the rental housing are occupied by very low-income households; and

(c) The rental housing was insured, financed, or assisted in whole or in part through:

(i) A federal or state housing program administered by the department of community, trade, and economic development; or

(ii) An affordable housing levy authorized under RCW 84.52.105.

(2) If less than seventy-five percent of the dwelling units are occupied by very low-income households, the rental housing used to provide housing for very low-income households is eligible for a partial exemption on the real property and a total exemption of the housing's personal property as follows:

(a) The partial exemption shall be allowed for each dwelling unit in the rental housing occupied by very low-income households.

(b) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing by a fraction. The numerator of the fraction is the number of dwelling units occupied by very low-income households as of January 1st of the year for which the exemption is claimed. The denominator of the fraction is the total number of occupied dwelling units as of January 1st of the year for which exemption is claimed.

(3) Rental housing for very low-income households is exempt from property taxation only if the nonprofit operating the housing is exempt from income tax under section 501(c) of the federal internal revenue code.

(4) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805.

(5) The nonprofit qualifying for the exemption under this section by providing rental housing for very low-income households may agree to make payments to the city, county, or other political subdivision for improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the rental

housing. However, these payments shall not exceed the amount last levied as the annual tax of the city, county, or political subdivision upon the property prior to exemption.

(6) As used in this section:

(a) "Occupied dwelling unit" means a living unit that is occupied on January 1st of the year in which the claim for exemption is submitted;

(b) "Rental housing" means residential housing that is occupied but not owned by very low-income households;

(c) "Very low-income households" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing is located and in effect as of January 1st of the year the application for exemption is submitted; and

(d) "Nonprofit" means a nonprofit as defined in RCW 84.36.800 and includes a limited partnership where the nonprofit or a public corporation established under RCW 35.21.660, 35.21.670, and 35.21.730 is a general partner, or a limited liability company where the nonprofit or the public corporation is a managing member.

Sec. 2. RCW 84.36.805 and 1998 c 311 s 25, 1998 c 202 s 3, and 1998 c 184 s 2 are each reenacted and amended to read as follows:

In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, 84.36.550, ~~((and))~~ 84.36.042, and section 1 of this act, the nonprofit organizations, associations, or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit

organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.035, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, ~~((or))~~ 84.36.042, or section 1 of this act, or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, ~~((and))~~ 84.36.042, and section 1 of this act.

Sec. 3. RCW 84.36.810 and 1998 c 311 s 26 and 1998 c 202 s 4 are each reenacted and amended to read as follows:

(1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.046, 84.36.050, 84.36.060, 84.36.550, ~~((and))~~ 84.36.042, and section 1 of this act, 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. 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, 84.36.046, 84.36.060, ~~((or))~~ 84.36.042, or section 1 of this act;

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(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(8)).~~

NEW SECTION. Sec. 4. This act applies to taxes levied in 1999 for collection in 2000 and thereafter.

Passed the House March 16, 1999.

Passed the Senate April 16, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 204

[House Bill 1463]

REPORTS TO SECRETARY OF TRANSPORTATION—DEADLINES

AN ACT Relating to deadlines for local reports to the secretary of transportation; and amending RCW 35.21.260 and 36.75.260.

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

Sec. 1. RCW 35.21.260 and 1984 c 7 s 19 are each amended to read as follows:

The governing authority of each city and town on or before ~~((March))~~ May 31st of each year shall submit such records and reports regarding street operations in the city or town to the secretary of transportation on forms furnished by him as are necessary to enable him to compile an annual report thereon.

Sec. 2. RCW 36.75.260 and 1984 c 7 s 31 are each amended to read as follows:

Each county legislative authority shall on or before ~~((March))~~ May 31st of each year submit such records and reports to the secretary of transportation, on forms furnished by the department, as are necessary to enable the secretary to compile an annual report on county highway operations.

Passed the House March 8, 1999.
 Passed the Senate April 13, 1999.
 Approved by the Governor May 7, 1999.
 Filed in Office of Secretary of State May 7, 1999.

CHAPTER 205

[Substitute House Bill 1485]
 WHIDBEY ISLAND GAME FARM

AN ACT Relating to the Whidbey Island game farm; adding a new section to chapter 77.12 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 77.12 RCW to read as follows:

(1) The department shall endeavor to sell the property known as Whidbey Island game farm, Island county.

(2) If the sale takes place one year or less from the effective date of this section, the property may be sold only to a nonprofit corporation, a consortium of nonprofit corporations, or a municipal corporation that intends to preserve, to the extent practicable, the property for purposes of undeveloped open space and historical preservation.

(3) If the sale takes place more than one year after the effective date of this section, the conditions in subsection (2) of this section do not apply.

NEW SECTION. Sec. 2. If the department of fish and wildlife has not sold the property known as Whidbey Island game farm, Island county, by June 30, 1999, then the treasurer shall lend six hundred ninety-four thousand dollars from the state general fund to the wildlife account. The department shall repay the loan by June 30, 2001, or when the department sells the property, whichever occurs earlier.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House March 9, 1999.
 Passed the Senate April 12, 1999.
 Approved by the Governor May 7, 1999.
 Filed in Office of Secretary of State May 7, 1999.

CHAPTER 206

[House Bill 1554]

HIGH OCCUPANCY VEHICLE LANE VIOLATIONS—TRAFFIC INFRACTIONS

AN ACT Relating to high-occupancy vehicle lane violations; and amending RCW 46.61.165.

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

Sec. 1. RCW 46.61.165 and 1998 c 245 s 90 are each amended to read as follows:

The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of public transportation vehicles or private motor vehicles carrying no fewer than a specified number of passengers when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources. ~~((There is hereby appropriated from the transportation fund state to the department of transportation, program C for the period ending June 30, 1993, an additional \$15 million for the sole purpose of expediting completion of the HOV eore lane system.))~~ Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. Violation of a restriction of highway usage prescribed by the appropriate authority under this section is a traffic infraction.

Passed the House March 15, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 207

[Substitute House Bill 1559]

VEHICLES TRANSPORTING EXPLOSIVES—REPEALED

AN ACT Relating to transportation of explosives; and repealing RCW 46.37.460.

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

NEW SECTION. **Sec. 1.** RCW 46.37.460 (Vehicles transporting explosives) and 1961 c 12 s 46.37.460 are each repealed.

Passed the House March 4, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 208

[House Bill 1561]

FARM MACHINERY—TIRES

AN ACT Relating to tires on farm machinery; and amending RCW 46.37.420.

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

Sec. 1. RCW 46.37.420 and 1990 c 105 s 1 are each amended to read as follows:

(1) It is unlawful to operate a vehicle upon the public highways of this state unless it is completely equipped with pneumatic rubber tires except vehicles equipped with temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

(2) No tire on a vehicle moved on a highway may have on its periphery any block, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery equipped with pneumatic tires or solid rubber tracks having protuberances that will not injure the highway, and except also that it is permissible to use tire chains or metal studs imbedded within the tire of reasonable proportions and of a type conforming to rules adopted by the state patrol, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. It is unlawful to use metal studs imbedded within the tire between April 1st and November 1st. The state department of transportation may, from time to time, determine additional periods in which the use of tires with metal studs imbedded therein is lawful.

(3) The state department of transportation and local authorities in their respective jurisdictions may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this section.

(4) Tires with metal studs imbedded therein may be used between November 1st and April 1st upon school buses and fire department vehicles, any law or regulation to the contrary notwithstanding.

Passed the House March 8, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 209

[House Bill 1664]

REAL ESTATE EXCISE TAX—STEP TRANSACTIONS

AN ACT Relating to preventing the use of step transactions to avoid real estate excise tax; amending RCW 82.45.010; and creating a new section.

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

NEW SECTION. Sec. 1. In chapter 25, Laws of 1993 sp. sess., the legislature found that transfer of ownership of entities can be equivalent to the sale of real property held by the entity. The legislature further found that all transfers of possession or use of real property should be subject to the same excise tax burdens.

The legislature intended to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW.

Sec. 2. RCW 82.45.010 and 1993 sp.s. c 25 s 502 are each amended to read as follows:

(1) As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department of revenue shall adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department shall consider the following:

(a) Persons shall be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(b) When persons are not commonly owned or controlled, they shall be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

(3) The term "sale" shall not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement.

(f) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(j) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration, or veterans administration.

(k) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: PROVIDED, That if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

(o)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because

of application of section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue Code of 1986, as amended.

(ii) However, the transfer described in (o)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (o)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(o)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(o)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

Passed the House March 12, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 210

[House Bill 1703]

HIGHWAY PROPERTY--DISPOSITION TO REGIONAL TRANSIT AUTHORITIES

AN ACT Relating to the disposition of state highway property; and amending RCW 47.12.063.

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

Sec. 1. RCW 47.12.063 and 1993 c 461 s 11 are each amended to read as follows:

(1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;

(e) The former owner of the property from whom the state acquired title;

~~((e))~~ (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

~~((f))~~ (g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

~~((g))~~ (h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;

~~((h))~~ (i) To any other owner of real property required for transportation purposes; or

~~((i))~~ (j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund.

Passed the House March 10, 1999.

Passed the Senate April 15, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 211

[Engrossed Substitute House Bill 1887]

MACHINERY AND EQUIPMENT TAX EXEMPTION

AN ACT Relating to revising the machinery and equipment tax exemption by more precisely describing terminology and eligibility; amending RCW 82.04.120, 82.08.02565, 82.08.02565, and 82.12.02565; 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. The legislature finds that the application of the manufacturer's machinery and equipment sales and use tax exemption has, in some

instances, been difficult and confusing for taxpayers, and included difficult reporting and recordkeeping requirements. In this act, it is the intent of the legislature to make clear its intent for the application of the exemption, and to extend the exemption to the purchase and use of machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire.

Sec. 2. RCW 82.04.120 and 1998 c 168 s 1 are each amended to read as follows:

"To manufacture" embraces 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 shall include: (1) The production or fabrication of special made or custom made articles; ~~((and))~~ (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; ~~((or))~~ activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; or the growing, harvesting, or production of agricultural products.

Sec. 3. RCW 82.08.02565 and 1998 c 330 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation or research and development operation.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. ~~((The))~~ Δ manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the ~~((finished product))~~ processed material leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

NEW SECTION. Sec. 4. The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation.

Sec. 5. RCW 82.08.02565 and 1999 c . . . s 3 (section 3 of this act) are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery

and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;
 (ii) Property with a useful life of less than one year;
 (iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;
 (ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;
 (iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;
 (iv) Provides physical support for or access to tangible personal property;
 (v) Produces power for, or lubricates machinery and equipment;
 (vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;
 (vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or
 (viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The term also includes that portion of a cogeneration project

that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(g) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(h) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

Sec. 6. RCW 82.12.02565 and 1998 c 330 s 2 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation or to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation.

NEW SECTION. Sec. 7. Sections 1 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

**NEW SECTION. Sec. 8. Sections 5 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.*

*Sec. 8 was vetoed. See message at end of chapter.

Passed the House March 15, 1999.

Passed the Senate April 16, 1999.

Approved by the Governor May 7, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 7, 1999.

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

"I am returning herewith, without my approval as to section 8, Engrossed Substitute House Bill No. 1887 entitled:

"AN ACT Relating to revising the machinery and equipment tax exemption by more precisely describing terminology and eligibility;"

Engrossed Substitute House Bill No. 1887 clarifies the intent of the legislature regarding the application of the retail sales and use tax exemption for manufacturing equipment and machinery, and extends the exemption to machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire.

ESHB 1887 clarifies the scope of a tax exemption and is very important. Taxpayers who are eligible for the exemption, as well as our state and local governments, need the certainty that this bill will provide. I have assumed, as did the legislature (as indicated by our respective balance sheets), that there is no fiscal impact associated with sections 1 through 4 of the bill. That is based on the continuing application of the "majority use" standard for machinery and equipment that has both qualifying and nonqualifying uses. The majority use standard affords meaningful use of the exemption to taxpayers, is fair, and is a reasonable way to administer the exemption consistent with the law, legislative intent, and promotion of economic development in our state. I strongly support the Department of Revenue's continued use of this standard.

Section 8 of ESHB 1887 is an emergency clause providing a July 1, 1999 effective date for sections 5 and 6 of the bill. Sections 5 and 6 extend the benefits of the tax exemption to testing operations. Unlike the remainder of this legislation, sections 5 and 6 represent a clear change in policy rather than a clarification of the 1995 law. The need for the policy change, although important, does not constitute an emergency.

For these reasons, I have vetoed section 8 of Engrossed Substitute House Bill No. 1887. With the exception of section 8, Engrossed Substitute House Bill No. 1887 is approved."

CHAPTER 212

[House Bill 2261]

CONSTRUCTION SERVICES—TAXATION

AN ACT Relating to the meaning of the phrase "services rendered in respect to constructing" for purposes of the business and occupation and sales and use taxes; adding a new section to chapter 82.04 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that the taxation of "services rendered in respect to constructing buildings or other structures" has generally included the entire transaction for construction, including certain services provided directly to the consumer or owner rather than the person engaged in the performance of the constructing activity. Changes in business practices and recent administrative and court decisions have confused the issue. It is the intent of the legislature to clarify which services, if standing alone and not part of the construction agreement, are taxed as retail or wholesale sales, and which services will continue to be taxed as a service.

(2) It is further the intent of the legislature to confirm that the entire price for the construction of a building or other structure for a consumer or owner continues to be a retail sale, even though some of the individual services reflected in the

price, if provided alone, would be taxed as services and not as separate retail or wholesale sales.

(3) Therefore, the intent of this act is to maintain the application of the law and not to extend retail treatment to activities not previously treated as retail activities. Services that are otherwise subject to tax as a service under RCW 82.04.290(2), including but not limited to engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services, remain subject to tax as a service under RCW 82.04.290(2), if the person responsible for the performance of those services is not also responsible for the performance of the constructing, building, repairing, improving, or decorating activities. Additionally, unless otherwise provided by law, a person entering into an agreement to be responsible for the performance of services otherwise subject to tax as a service under RCW 82.04.290(2), and subsequently entering into a separate agreement to be responsible for the performance of constructing, building, repairing, improving, or decorating activities, is subject to tax as a service under RCW 82.04.290(2) with respect to the first agreement, and is subject to tax under the appropriate section of chapter 82.04 RCW with respect to the second agreement, if at the time of the first agreement there was no contemplation by the parties, as evidenced by the facts, that the agreements would be awarded to the same person.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) As used in RCW 82.04.050, the term "services rendered in respect to" means those services that are directly related to the constructing, building, repairing, improving, and decorating of buildings or other structures and that are performed by a person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity. The term does not include services such as engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services provided to the consumer of, or person responsible for performing, the constructing, building, repairing, improving, or decorating services.

(2) A contract or agreement under which a person is responsible for both services that would otherwise be subject to tax as a service under RCW 82.04.290(2) and also constructing, building, repairing, improving, or decorating activities that would otherwise be subject to tax under another section of this chapter is subject to the tax that applies to the predominant activity under the contract or agreement.

(3) Unless otherwise provided by law, a contract or agreement under which a person is responsible for activities that are subject to tax as a service under RCW 82.04.290(2), and a subsequent contract or agreement under which the same person is responsible for constructing, building, repairing, improving, or decorating activities subject to tax under another section of this chapter, shall not be combined and taxed as a single activity if at the time of the first contract or agreement it was

not contemplated by the parties, as evidenced by the facts, that the same person would be awarded both contracts.

(4) As used in this section "responsible for the performance" means that the person is obligated to perform the activities, either personally or through a third party. A person who reviews work for a consumer, retailer, or wholesaler but does not supervise or direct the work is not responsible for the performance of the work. A person who is financially obligated for the work, such as a bank, but who does not have control over the work itself is not responsible for the performance of the work.

Passed the House March 12, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 213

[Senate Bill 5005]

HIGHWAY INFORMATION SIGNS—ROUTE MILEAGE

AN ACT Relating to highway information signs; and amending RCW 47.36.320 and 47.36.330.

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

Sec. 1. RCW 47.36.320 and 1986 c 114 s 2 are each amended to read as follows:

The department is authorized to erect and maintain specific information panels within the right of way of both the primary system and the scenic system to give the traveling public specific information as to gas, food, recreation, or lodging available off the primary or scenic highway accessible by way of highways intersecting the primary or scenic highway. Such specific information panels and tourist-oriented directional signs shall be permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the provisions of Title 23 C.F.R. Secs. 655.308(a) and 655.309(a). Specific information panels shall include the words "GAS," "FOOD," "RECREATION," or "LODGING" and directional information and may contain one or more individual business signs maintained on the panel. The erection and maintenance of specific information panels along primary or scenic highways shall conform to the national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23 United States Code and rules adopted by the state department of transportation including the manual on uniform traffic control devices for streets and highways. A motorist service business located within one mile of a state highway shall not be permitted to display its name, brand, or trademark on a specific information panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise

signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "RECREATION," or "LODGING" specific information panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway except as provided in RCW 47.36.330(3) (b) and (c), and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance.

Sec. 2. RCW 47.36.330 and 1985 c 142 s 3 are each amended to read as follows:

(1) Not more than six business signs may be permitted on specific information panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On fully-controlled, limited access highways, gas, food, or lodging activities shall be located within three miles. Camping activities shall be within five miles.

(b) On highways with partial access control or no access control, gas, food, lodging, or camping activities shall be located within five miles.

(3)(a) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

(b) The department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible service.

(c) The department may erect and maintain signs on a route up to a maximum of twenty miles if it qualifies as an eligible service and is within a distressed area under the criteria of chapter 43.165 RCW.

Passed the Senate April 20, 1999.

Passed the House April 7, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 214

[Substitute Senate Bill 5011]

DANGEROUS MENTALLY ILL OFFENDERS

AN ACT Relating to dangerous mentally ill offenders; amending RCW 71.05.212, 71.24.015, and 71.24.300; adding new sections to chapter 72.09 RCW; adding new sections to chapter 71.05 RCW; adding a new section to chapter 71.24 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 intends to improve the process of identifying, and providing additional mental health treatment for, persons: (1) Determined to be dangerous to themselves or others as a result of a mental disorder or a combination of a mental disorder and chemical dependency or abuse; and (2) under, or being released from, confinement or partial confinement of the department of corrections.

The legislature does not create a presumption that any person subject to the provisions of this act is dangerous as a result of a mental disorder or chemical dependency or abuse. The legislature intends that every person subject to the provisions of this act retain the amount of liberty consistent with his or her condition, behavior, and legal status and that any restraint of liberty be done solely on the basis of forensic and clinical practices and standards.

NEW SECTION. **Sec. 2.** A new section is added to chapter 72.09 RCW to read as follows:

(1) The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of mentally ill offenders and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 9.94A.155 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or

classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the county designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a county designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate county designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a county designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a county designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the county designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the county designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section.

NEW SECTION. Sec. 3. A new section is added to chapter 72.09 RCW to read as follows:

The secretaries of the department of corrections and the department of social and health services shall adopt rules and develop working agreements which will ensure that offenders identified under section 2(1) of this act will be assisted in making application for medicaid to facilitate a decision regarding their eligibility for such entitlements prior to the end of their term of confinement in a correctional facility.

NEW SECTION. Sec. 4. A new section is added to chapter 71.05 RCW to read as follows:

The legislature intends that, when evaluating a person who is identified under section 2(7) of this act, the professional person at the evaluation and treatment facility shall, when appropriate after consideration of the person's mental condition and relevant public safety concerns, file a petition for a ninety-day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

Sec. 5. RCW 71.05.212 and 1998 c 297 s 19 are each amended to read as follows:

Whenever a county designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information and records regarding: (1) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior determinations of incompetency or insanity under chapter 10.77 RCW; and (4) prior commitments under this chapter.

In addition, when conducting an evaluation for offenders identified under section 2 of this act, the county designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement.

NEW SECTION. Sec. 6. A new section is added to chapter 71.05 RCW to read as follows:

(1) When making a decision under this chapter whether to require a less restrictive alternative treatment, the court shall consider whether it is appropriate to include or exclude time spent in confinement when determining whether the person has committed a recent overt act.

(2) When determining whether an offender is a danger to himself or herself or others under this chapter, a court shall give great weight to any evidence submitted to the court regarding an offender's recent history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement.

Sec. 7. RCW 71.24.015 and 1991 c 306 s 1 are each amended to read as follows:

It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs which provide for:

(1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. Access to

mental health services shall not be limited by a person's history of confinement in a state, federal, or local correctional facility. It is also the purpose of this chapter to promote the early identification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) Accountability of services through state-wide standards for monitoring and reporting of information;

(3) Minimum service delivery standards;

(4) Priorities for the use of available resources for the care of the mentally ill;

(5) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to counties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers.

Sec. 8. RCW 71.24.300 and 1994 c 204 s 2 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))~~ persons currently confined at, or under the supervision of, a state mental hospital pursuant to chapter 10.77 RCW, 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)~~) (6). 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.

NEW SECTION. Sec. 9. A new section is added to chapter 71.24 RCW to read as follows:

(1) The secretary shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the secretary deems necessary to assist offenders identified under section 2 of this act. The contracts may be with regional support networks or any other qualified and appropriate entities.

(2) The case manager has the authority to assist these offenders in obtaining the services, as set forth in the plan created under section 2(2) of this act, for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining chemical dependency treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of sections 2 and 4 of this act, RCW 71.05.212, and this section and distributed to the regional support networks are to supplement and not to supplant general funding. Funds appropriated to implement sections 2 and 4 of this act, RCW 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the statutory distribution formula established pursuant to RCW 71.24.035.

NEW SECTION. Sec. 10. The Washington state institute for public policy, in conjunction with the University of Washington, shall conduct an evaluation of this act to determine:

- (1) Whether there is a reduction in criminal recidivism as a result of this act;
- (2) Whether this act has resulted in: (a) Increased treatment of, and services to, dangerous mentally ill offenders, including services at the department of corrections, and through other publicly funded services; (b) a reduction in repeated inpatient mental health treatment by the same offender; and (c) reduced length of stays at state hospitals;
- (3) Whether this act improves delivery and effectiveness of the treatment and services, including mental health, drug/alcohol, case management, housing assistance, and other provided services;
- (4) Whether services under this act should be expanded to include other classifications of offenders, such as: Juveniles; felons not sentenced to confinement; misdemeanants; and felons in county jails. Cost estimates for expansion of each classification shall be included;
- (5) The validity of the risk assessment tool utilized by the department of corrections to assess dangerousness of offenders;
- (6) Increases in early medicaid enrollment and associated cost savings; and
- (7) Any savings in bed spaces in the department of corrections as a result of this act.

The evaluation shall be submitted to the governor and legislature by December 1, 2004.

NEW SECTION. **Sec. 11.** The secretary of the department of corrections and the secretary of the department of social and health services shall, in consultation with the regional support networks and provider representatives, each adopt rules as necessary to implement this act.

NEW SECTION. **Sec. 12.** Sections 1, 2, and 4 through 9 of this act take effect March 15, 2000.

NEW SECTION. **Sec. 13.** Section 1 of this act shall not be codified.

Passed the Senate March 12, 1999.

Passed the House April 25, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 215

[Substitute Senate Bill 5064]

PUBLIC TRANSPORTATION INFORMATION—CONFIDENTIALITY

AN ACT Relating to confidentiality of certain public transportation information; amending RCW 42.17.310; and adding a new section to chapter 47.04 RCW.

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

Sec. I. RCW 42.17.310 and 1998 c 69 s 1 are each amended to read as follows:

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

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

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

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

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

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

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

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

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

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

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

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

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

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

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 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, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(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 unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

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

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

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this

chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

~~((nn))~~ **(pp)** Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

~~((oo))~~ **(qq)** Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

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

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

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

NEW SECTION. **Sec. 2.** A new section is added to chapter 47.04 RCW to read as follows:

The department, a county, city, town, any other public entity, and any private entity under the public-private transportation initiatives authorized under chapter 47.46 RCW, that provides transit, high-speed ground transportation, high capacity transportation service, ferry service, toll facilities, or other public transportation service or facilities may only use personally identifiable information obtained from the use of electronic toll payments, transit passes, or other fare media such as magnetic strip cards or stored value cards for billing purposes. This information may not be used to track or monitor individual use of the public transportation facilities or service, except for billing purposes and to provide statistical compilations and reports that do not identify an individual.

Passed the Senate April 20, 1999.

Passed the House April 9, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 216

[Substitute Senate Bill 5153]

FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

AN ACT Relating to the freight mobility strategic investment board; and amending RCW 47.06A.020, 47.06A.030, and 47.06A.040.

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

Sec. 1. RCW 47.06A.020 and 1998 c 175 s 3 are each amended to read as follows:

(1) The board shall:

(a) Adopt rules and procedures necessary to implement the freight mobility strategic investment program;

(b) Solicit from public entities proposed projects that meet eligibility criteria established in accordance with subsection (4) of this section; and

(c) Review and evaluate project applications based on criteria established under this section, and prioritize and select projects comprising a portfolio to be funded in part with grants from state funds appropriated for the freight mobility strategic investment program. In determining the appropriate level of state funding for a project, the board shall ensure that state funds are allocated to leverage the greatest amount of partnership funding possible. After selecting projects comprising the portfolio, the board shall submit them as part of its budget request to the office of financial management and the legislature. The board shall ensure that projects submitted as part of the portfolio are not more appropriately funded with other federal, state, or local government funding mechanisms or programs. The board shall reject those projects that appear to improve overall general mobility with limited enhancement for freight mobility.

The board shall provide periodic progress reports on its activities to the (~~governor~~) office of financial management and the legislative transportation committee.

(2) The board may:

(a) Accept from any state or federal agency, loans or grants for the financing of any transportation project and enter into agreements with any such agency concerning the loans or grants;

(b) Provide technical assistance to project applicants;

(c) Accept any gifts, grants, or loans of funds, property, or financial, or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(3) The board shall designate strategic freight corridors within the state. The board shall update the list of designated strategic corridors not less than every two

years, and shall establish a method of collecting and verifying data, including information on city and county-owned roadways.

(4) From June 11, 1998, through the biennium ending June 30, 2001, the board shall utilize threshold project eligibility criteria that, at a minimum, includes the following:

- (a) The project must be on a strategic freight corridor;
- (b) The project must meet one of the following conditions:
 - (i) It is primarily aimed at reducing identified barriers to freight movement with only incidental benefits to general or personal mobility; or
 - (ii) It is primarily aimed at increasing capacity for the movement of freight with only incidental benefits to general or personal mobility; or
 - (iii) It is primarily aimed at mitigating the impact on communities of increasing freight movement, including roadway/railway conflicts; and
- (c) The project must have a total public benefit/total public cost ratio of equal to or greater than one.

(5) From June 11, 1998, through the biennium ending June 30, 2001, the board shall use the multicriteria analysis and scoring framework for evaluating and ranking eligible freight mobility and freight mitigation projects developed by the freight mobility project prioritization committee and contained in the January 16, 1998, report entitled "Project Eligibility, Priority and Selection Process for a Strategic Freight Investment Program." The prioritization process shall measure the degree to which projects address important program objectives and shall generate a project score that reflects a project's priority compared to other projects. The board shall assign scoring points to each criterion that indicate the relative importance of the criterion in the overall determination of project priority. After June 30, 2001, the board may supplement and refine the initial project priority criteria and scoring framework developed by the freight mobility project prioritization committee as expertise and experience is gained in administering the freight mobility program.

(6) It is the intent of the legislature that each freight mobility project contained in the project portfolio submitted by the board utilize the greatest amount of nonstate funding possible. The board shall adopt rules that give preference to projects that contain the greatest levels of financial participation from nonprogram fund sources. The board shall consider twenty percent as the minimum partnership contribution, but shall also ensure that there are provisions allowing exceptions for projects that are located in areas where minimal local funding capacity exists or where the magnitude of the project makes the adopted partnership contribution financially unfeasible.

(7) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours.

Sec. 2. RCW 47.06A.030 and 1998 c 175 s 4 are each amended to read as follows:

(1) The freight mobility strategic investment board is created. The board shall convene by July 1, 1998.

(2) The board is composed of twelve members. The following members are appointed by the governor for terms of four years, except that five members initially are appointed for terms of two years: (a) Two members, one of whom is from a city located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the association of Washington cities or its successor; (b) two members, one of whom is from a county having a strategic freight corridor within its boundaries, appointed from a list of at least four persons nominated by the Washington state association of counties or its successor; (c) two members, one of whom is from a port district located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the Washington public ports association or its successor; (d) one member representing the office of financial management; (e) one member appointed as a representative of the trucking industry; (f) one member appointed as a representative of the railroads; (g) the secretary of the department of transportation; (h) one member representing the steamship industry; and (i) one member of the general public. In appointing the general public member, the governor shall endeavor to appoint a member with special expertise in relevant fields such as public finance, freight transportation, or public works construction. The governor shall appoint the general public member as chair of the board. In making appointments to the board, the governor shall ensure that each geographic region of the state is represented.

(3) Members of the board ~~((may not receive compensation. Reimbursement for))~~ shall be reimbursed for reasonable and customary travel ~~((and other))~~ expenses ~~((shall be provided by each respective organization that a member represents on the board))~~ as provided in RCW 43.03.050 and 43.03.060.

(4) If a vacancy on the board occurs by death, resignation, or otherwise, the governor shall fill the vacant position for the unexpired term. Each vacancy in a position appointed from lists provided by the associations and departments under subsection (2) of this section must be filled from a list of at least four persons nominated by the relevant association or associations.

(5) The appointments made in subsection (2) of this section are not subject to confirmation.

Sec. 3. RCW 47.06A.040 and 1998 c 175 s 5 are each amended to read as follows:

The board ~~((shall)), at its option, may either~~ appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board ~~((—Staff support to the board shall initially be provided by the department of transportation, the transportation improvement board, and the county road administration board or their successor agencies. The board shall develop a plan that provides for administration and staffing of the program and present this plan to the office of~~

financial management and the legislative transportation committee by December 31, 1998)) or make provisions ensuring the responsibilities of the executive director are carried out by an existing transportation-related state agency or by private contract. Staff support to the board shall be provided by the department of transportation, the transportation improvement board, and the county road administration board, or their successor agencies.

Passed the Senate April 20, 1999.

Passed the House April 8, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 217

[Second Substitute Senate Bill 5171]

WASHINGTON STATE PATROL EMPLOYMENT AGREEMENTS

AN ACT Relating to Washington state patrol employment agreements; amending RCW 41.56.020, 41.56.030, and 41.56.475; and adding a new section to chapter 41.56 RCW.

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

Sec. 1. RCW 41.56.020 and 1994 c 297 s 1 are each amended to read as follows:

This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington, including district courts and superior courts, except as otherwise provided by RCW 54.04.170, 54.04.180, and chapters 41.59, 47.64, and 53.18 RCW. ~~((The Washington state patrol shall be considered a public employer of state patrol officers appointed under RCW 43.43.020. The Washington state bar association shall be considered a public employer of its employees.))~~

Sec. 2. RCW 41.56.030 and 1995 c 273 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or

appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. ~~((In the case of the Washington state patrol, "collective bargaining" shall not include wages and wage-related matters.))~~

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) ~~((i) Until July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of seven thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of thirty five thousand or more; (ii) beginning on July 1, 1997,))~~ Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW to read as follows:

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the Washington state patrol with respect to the officers of the Washington state patrol appointed under RCW 43.43.020. Subjects of bargaining include wage-related matters, except that the Washington state patrol is prohibited from negotiating rates of pay or wage levels and any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

(2) Provisions pertaining to wage-related matters in a collective bargaining agreement between the Washington state patrol and the Washington state patrol officers that are entered into before the legislature approves the funds necessary to implement the provisions must be conditioned upon the legislature's subsequent approval of the funds.

Sec. 4. RCW 41.56.475 and 1993 c 351 s 1 are each amended to read as follows:

In addition to the classes of employees listed in RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) ~~The mediator ((shall not consider wages and wage-related matters)) or arbitration panel may consider only matters that are subject to bargaining under section 3 of this act.~~

(2) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
- (d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and
- (e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of ~~((hours and conditions of employment))~~ matters that are subject to bargaining under section 3 of this act.

Passed the Senate March 11, 1999.
Passed the House April 13, 1999.
Approved by the Governor May 7, 1999.
Filed in Office of Secretary of State May 7, 1999.

CHAPTER 218

[Substitute Senate Bill 5273]

SCENIC BYWAY DESIGNATION

AN ACT Relating to a scenic byways designation program; amending RCW 47.39.010, 47.39.030, 47.39.060, and 47.39.080; adding new sections to chapter 47.39 RCW; repealing RCW 47.39.070; and declaring an emergency.

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

Sec. 1. RCW 47.39.010 and 1967 ex.s. c 85 s 1 are each amended to read as follows:

There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage.

Recognizing that the Transportation Equity Act for the 21st Century establishes a national "scenic byway" program that could benefit state and local roadways, the Washington state scenic byway designation program is revised to address state and local transportation routes. Byways in this program must be designated and maintained in accordance with the criteria developed by the department under this chapter. However, a highway so designated under section 4 of this act does not become part of the scenic and recreational highway system unless approved by the legislature.

Sec. 2. RCW 47.39.030 and 1984 c 7 s 207 are each amended to read as follows:

(1) The department shall pay from motor vehicle funds appropriated for construction of state highways, the following costs of developing and constructing scenic and recreational highways: (a) Acquisition of the right of way necessary for state highway purposes; (b) construction of the portion of the highway designed primarily for motor vehicle travel; (c) exit and entrance roadways providing access to scenic observation points; (d) safety rest areas; (e) roadside landscaping within the portion of the highway right of way acquired by the department for state highway purposes; (f) the uniform signs and markers designating the various features and facilities of the scenic and recreational highways; and (g) any additional costs of constructing and developing the scenic and recreational highways, including property acquisition adjacent to highways as authorized by RCW 47.12.250, for which the department shall receive reimbursement from the federal government or any other source.

(2) The parks and recreation commission shall pay the costs of developing and constructing the scenic and recreational highways not provided for in subsection (1) of this section from any funds appropriated for such purposes.

(3) The costs of maintaining the scenic and recreational highway system shall be allocated between the department and the parks and recreation commission in the same manner that costs of developing and constructing such highways are allocated in subsections (1) and (2) of this section.

(4) The city, town, county, regional transportation planning organization, federal agency, federally recognized tribe, or any other such party that nominates a roadway not located on a state-owned right of way for designation as a scenic byway shall bear all costs relating to the nomination and designation of the byway, such as costs for developing, maintaining, planning, designing, and constructing the scenic byway.

Sec. 3. RCW 47.39.060 and 1984 c 7 s 209 are each amended to read as follows:

The department and the parks and recreation commission (~~shall~~) may include, where appropriate, on any maps, or in any relevant descriptive material they may prepare at state expense, (~~include~~) references to those portions of highways designated in RCW 47.39.020, and may include those designated byways by appropriate color or code designation.

NEW SECTION. Sec. 4. A new section is added to chapter 47.39 RCW to read as follows:

(1) The department, in consultation with the department of community, trade, and economic development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, federally recognized tribes, regional transportation planning organizations, Washington-based automobile clubs, state-wide bicycling organizations, and other interested parties, shall develop by December 31, 1999, criteria for assessing scenic byways and heritage tour routes and an appropriate method of nomination and application for the designation and removal of the designation of the byways. Factors the department may take into consideration, but is not limited by, are: (a) Scenic quality of the byway; (b) natural aspects, such as geological formations, water bodies, vegetation, and wildlife; (c) historic elements; (d) cultural features such as the arts, crafts, music, customs, or traditions of a distinct group of people; (e) archaeological features; (f) recreational activities; (g) roadway safety including accommodations for bicycle and pedestrian travel, tour buses, and automobiles; (h) scenic byway and local and regional byway management plans; and (i) local public involvement and support for the byway.

(2) The criteria developed in subsection (1) of this section must not impose nor require regulation of privately owned lands or property rights.

(3) Any person may nominate a roadway, path, or trail for inclusion in the scenic byway program. The department shall assess nominations in accordance with the criteria developed under subsection (1) of this section. The department shall submit its recommendations for scenic byway and heritage tour route designations to the commission for its approval and official designation of the roadway, path, or trail as a scenic byway or a heritage tour route. All decisions

made by the commission relating to scenic byway and heritage tour route designations are final.

(4) The department shall apply the criteria in subsection (1) of this section to state highways that are currently not a part of the designated scenic and recreational highway system. The department shall respond to local requests for route evaluation as defined in subsection (3) of this section.

(5) Once the commission has designated a roadway as a scenic byway, the department may submit an individual nomination to the Federal Highway Administration for its consideration of whether the roadway qualifies to be designated as a national scenic byway or an All-American Roadway.

NEW SECTION. Sec. 5. A new section is added to chapter 47.39 RCW to read as follows:

The department shall participate with local communities to develop a corridor management plan for a state highway nominated to be part of the scenic byway program. Local, regional, or other governmental bodies shall develop a corridor management plan for nominated routes that are under their jurisdiction.

Sec. 6. RCW 47.39.080 and 1993 c 430 s 8 are each amended to read as follows:

Recognizing that the (~~Intermodal Surface Transportation Efficiency Act of 1991~~) Transportation Equity Act for the 21st Century establishes a national "Scenic Byways" grant program and a new apportionment program called "Transportation Enhancement Activities," the department of transportation shall place high priority on obtaining funds from those sources for further development of a scenic and recreational highways program, including (~~highway heritage~~) enhancement projects on the designated scenic and recreational highway system. The department shall consider the use of the designated system by bicyclists and pedestrians in connection with nonmotorized routes in the state trail plan, and the state bicycle plan which are also eligible for (~~ISTEA~~) TEA-21 funding. Appropriate signage may be used at intersections of nonmotorized and motorized systems to demonstrate the access, location, and the interconnectivity of various modes of travel for transportation and recreation. For the purposes of leveraging national scenic byway planning grant funds, the commission may designate eligible state highways as scenic byways on an interim basis.

NEW SECTION. Sec. 7. A new section is added to chapter 47.39 RCW to read as follows:

(1) The commission may remove the designation of a route if it no longer possesses the intrinsic qualities or fails to meet the criteria that supported its designation.

(2) The department shall determine whether a roadway designated as a national scenic byway or an All-American Roadway is being properly maintained in accordance with the roadway's byway management plan, including preserving the intrinsic qualities that originally supported the designation. When the department determines that the intrinsic qualities of a national scenic byway or All-

American Roadway have not been maintained sufficiently to retain its designation, the department shall notify the party responsible for maintaining the designation of the finding and allow the party an opportunity, under federal regulations, for corrective action before formal removal of the designation of the roadway.

(3) Local, regional, or other governmental bodies may notify the commission of the removal of a designated route if they determine it no longer meets the designation criteria, or community support for the designation no longer exists, or it no longer possesses the intrinsic qualities that supported its original designation.

(4) State or local removal of a designated route will result in discontinued state support of the designated route and can include, but is not limited to, state matching assistance for grant applications, the removal of signs directly related to the byway, free promotional information in the state-owned safety rest areas, and inclusion in maps, brochures, and electronic media.

NEW SECTION. Sec. 8. RCW 47.39.070 and 1990 c 240 s 2 are each repealed.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate April 20, 1999.

Passed the House April 8, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 219

[Senate Bill 5384]

STUDED TIRES—LIGHTWEIGHT STUDS

AN ACT Relating to studded tires; adding a new section to chapter 46.04 RCW; and adding new sections to chapter 46.37 RCW.

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:

"Lightweight stud" means a stud intended for installation and use in a vehicle tire. As used in this title, this means a stud that is recommended by the manufacturer of the tire for the type and size of the tire and that:

(1) Weighs no more than 1.5 grams if the stud conforms to Tire Stud Manufacturing Institute (TSMI) stud size 14 or less;

(2) Weighs no more than 2.3 grams if the stud conforms to TSMI stud size 15 or 16; or

(3) Weighs no more than 3.0 grams if the stud conforms to TSMI stud size 17 or larger.

A lightweight stud may contain any materials necessary to achieve the lighter weight.

NEW SECTION. Sec. 2. A new section is added to chapter 46.37 RCW to read as follows:

Beginning January 1, 2000, a person offering to sell to a tire dealer conducting business in the state of Washington, a metal flange or cleat intended for installation as a stud in a vehicle tire shall certify that the studs are lightweight studs as defined in section 1 of this act. Certification must be accomplished by clearly marking the boxes or containers used to ship and store studs with the designation "lightweight." This section does not apply to tires or studs in a wholesaler's existing inventory as of January 1, 2000.

NEW SECTION. Sec. 3. A new section is added to chapter 46.37 RCW to read as follows:

Beginning July 1, 2001, a person may not sell a studded tire or sell a stud for installation in a tire unless the stud qualifies as a lightweight stud under section 1 of this act.

Passed the Senate April 20, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 220

[Engrossed Substitute Senate Bill 5661]

LEASEHOLD EXCISE TAX—DEFINITIONS

AN ACT Relating to leasehold excise tax clarification and administrative simplification; and amending RCW 82.29A.010 and 82.29A.020.

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

Sec. I. RCW 82.29A.010 and 1975-'76 2nd ex.s. c 61 s 1 are each amended to read as follows:

(1)(a) The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

(b) The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

(c) The legislature finds that lessees of publicly owned property are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property.

(2) The legislature further finds that experience gained by lessors, lessees, and the department of revenue since enactment of the leasehold excise tax under this chapter has shed light on areas in the leasehold excise statutes that need

explanation and clarification. The purpose of chapter . . . , Laws of 1999 (this act) is to make those changes.

Sec. 2. RCW 82.29A.020 and 1991 c 272 s 23 are each amended to read as follows:

As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership: PROVIDED, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements (~~(or)~~), rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: PROVIDED, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent shall include only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and shall not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the

private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value ~~((of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value))~~ shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

(6) "Products" includes natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock.

Passed the Senate April 21, 1999.

Passed the House April 9, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 221

[Substitute Senate Bill 5745]

BINGO AND RAFFLES—TAX REDUCTION

AN ACT Relating to reducing the tax on bingo and raffles; amending RCW 9.46.110; and providing an effective date.

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

Sec. 1. RCW 9.46.110 and 1997 c 394 s 4 are each amended to read as follows:

(1) The legislative authority of any county, city-county, city, or town, by local law and ordinance, and in accordance with the provisions of this chapter and rules adopted under this chapter, may provide for the taxing of any gambling activity authorized by this chapter within its jurisdiction, the tax receipts to go to the county, city-county, city, or town so taxing the activity. Any such tax imposed by a county alone shall not apply to any gambling activity within a city or town located in the county but the tax rate established by a county, if any, shall constitute the tax rate throughout the unincorporated areas of such county.

(2) The operation of punch boards and pull-tabs are subject to the following conditions:

(a) Chances may only be sold to adults;

(b) The price of a single chance may not exceed one dollar;

(c) No punch board or pull-tab license may award as a prize upon a winning number or symbol being drawn the opportunity of taking a chance upon any other punch board or pull-tab;

(d) All prizes available to be won must be described on an information flare. All merchandise prizes must be on display within the immediate area of the premises in which any such punch board or pull-tab is located. Upon a winning number or symbol being drawn, a merchandise prize must be immediately removed from the display and awarded to the winner. All references to cash or merchandise prizes, with a value over twenty dollars, must be removed immediately from the information flare when won, or such omission shall be deemed a fraud for the purposes of this chapter; and

(e) When any person wins money or merchandise from any punch board or pull-tab over an amount determined by the commission, every licensee shall keep a public record of the award for at least ninety days containing such information as the commission shall deem necessary.

(3)(a) Taxation of bingo and raffles shall never be in an amount greater than ~~((ten))~~ five percent of the gross receipts from a bingo game or raffle less the amount awarded as cash or merchandise prizes.

(b) Taxation of amusement games shall only be in an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by the county, city or town law enforcement agency and in no event shall such taxation exceed two percent of the gross receipts from the amusement game less the amount awarded as prizes.

(c) No tax shall be imposed under the authority of this chapter on bingo or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization as defined in this chapter, which organization has no paid operating or management personnel and has gross receipts from bingo or amusement games, or a combination thereof, not exceeding

five thousand dollars per year, less the amount awarded as cash or merchandise prizes.

(d) No tax shall be imposed on the first ten thousand dollars of gross receipts less the amount awarded as cash or merchandise prizes from raffles conducted by any bona fide charitable or nonprofit organization as defined in this chapter.

(e) Taxation of punch boards and pull-tabs for bona fide charitable or nonprofit organizations is based on gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes, and shall not exceed a rate of ten percent. At the option of the county, city-county, city, or town, the taxation of punch boards and pull-tabs for commercial stimulant operators may be based on gross receipts from the operation of the games, and may not exceed a rate of five percent, or may be based on gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes, and may not exceed a rate of ten percent.

(f) Taxation of social card games may not exceed twenty percent of the gross revenue from such games.

(4) Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes.

NEW SECTION. Sec. 2. This act takes effect January 1, 2000.

Passed the Senate March 10, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 222

[Substitute Senate Bill 6052]

HUNTER SAFETY PROGRAMS—VOLUNTEER SUPPORT

AN ACT Relating to funding hunter safety programs; amending RCW 9.41.070; 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 hunter education program offers classes that all new hunters in the state are legally required to complete, but that budget reductions have limited the assistance that may be provided to the volunteers who conduct these classes. A portion of the funds for this program is provided by statute exclusively for printing and distributing the hunter safety pamphlet. While this pamphlet should remain the highest spending priority for these funds, there is a surplus in the account which could assist with other activities by the volunteers conducting the hunter education program.

Sec. 2. RCW 9.41.070 and 1996 c 295 s 6 are each amended to read as follows:

(1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.50.060, or 26.50.070;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2) The issuing authority shall check with the national crime information center, the Washington state patrol electronic data base, the department of social and health services electronic data base, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm and therefore ineligible for a concealed pistol license. This subsection applies whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in

accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, not more than two complete sets of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include two complete sets of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall meet the additional requirements of RCW 9.41.170 and produce proof of compliance with RCW 9.41.170 upon application. The license shall be in triplicate and in a form to be prescribed by the department of licensing.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the Federal Bureau of Investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

(a) Fifteen dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;

(c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(d) Three dollars to the firearms range account in the general fund.

(6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

(a) Fifteen dollars shall be paid to the state general fund;

(b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(c) Three dollars to the firearms range account in the general fund.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state wildlife fund and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

(b) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

(a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;

(b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or

(c) Anywhere in the state if the applicant is a nonresident.

Passed the Senate March 13, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 7, 1999.

Filed in Office of Secretary of State May 7, 1999.

CHAPTER 223

{House Bill 1023}

TEACHERS' RETIREMENT SYSTEM—EXTRAORDINARY INVESTMENT GAINS

AN ACT Relating to the sharing of extraordinary investment gains in the teachers' retirement system plan 3; amending RCW 41.50.145; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) On or before July 1, 1999, the member account of a person meeting the requirements of this section shall be credited by the 1999 retroactive extraordinary investment gain amount.

(2) The following persons are eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3 who transferred to plan 3 pursuant to RCW 41.32.817 on or after September 1, 1997, and before February 1, 1998; and

(b) Had a balance of at least one thousand dollars in contributions and interest credited to their member's individual account pursuant to chapter 41.32 RCW by August 31, 1997; and

(i) Who earned service credit during the twelve-month period from September 1, 1996, to August 31, 1997; or

(ii) Who:

(A) Completed ten service credit years; or

(B) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(C) Completed five service credit years by July 1, 1996, under plan 2.

(3) The 1999 retroactive extraordinary investment gain amount shall be calculated as follows:

(a) An amount equal to the average benefit per year of service paid to members of the teachers' retirement system plan 3 in 1998, pursuant to section 309, chapter 341, Laws of 1998.

(b) Distributed to persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31, 1997.

Sec. 2. RCW 41.50.145 and 1998 c 341 s 515 are each amended to read as follows:

(1) If the department determines that due to employer error a member of plan 3 has suffered a loss of investment return, the employer shall pay the department for credit to the member's account the amount determined by the department as necessary to correct the error.

(2) If the department determines that due to departmental error a member of plan 3 has suffered a loss of investment return, the department shall credit to the member's account from the (~~school employees'~~) appropriate retirement system combined plan 2 and 3 fund the amount determined by the department as necessary to correct the error.

NEW SECTION. **Sec. 3.** Section 1 of this act is added to chapter 41.34 RCW, but because of its temporary nature, shall not be codified.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House April 19, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 224

[House Bill 1154]

TAX LEVIES FOR MEDICAL CARE AND SERVICES—TIME LIMITS

AN ACT Relating to eliminating the time limit on regular tax levies for medical care and services; amending RCW 84.52.069 and 29.30.111; and creating a new section.

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

Sec. 1. RCW 84.52.069 and 1995 c 318 s 9 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~~). The tax shall be imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. A tax levy under this section must be specifically authorized 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 percent of the total 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 percent of the total 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 percent of the total number of voters voting in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111. A taxing district shall not submit to the voters at the same election multiple propositions to impose a levy under this section.

(3) A taxing district imposing a permanent levy under this section shall provide for separate accounting of expenditures of the revenues generated by the levy. The taxing district shall maintain a statement of the accounting which shall be updated at least every two years and shall be available to the public upon request at no charge.

(4) A taxing district imposing a permanent levy under this section shall provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. This referendum procedure shall specify that a referendum petition may be filed at any time with a filing officer, as identified in the ordinance or resolution. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the taxing district, as of the last general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election within the taxing district if one is to be held within one hundred eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with RCW 29.13.020.

The referendum procedure provided in this subsection shall be exclusive in all instances for any taxing district imposing the tax under this section and shall supersede the procedures provided under all other statutory or charter provisions for initiative or referendum which might otherwise apply.

~~((3))~~ (5) 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))~~ (6) 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 limited in duration and that is authorized subsequent to a county emergency medical service levy that is limited in duration, shall expire concurrently with the county emergency medical service levy.

~~((5))~~ (7) The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section.

~~((6))~~ (8) If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

(9) 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.

Sec. 2. RCW 29.30.111 and 1984 c 131 s 3 are each amended to read as follows:

(1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.69.145, 67.38.130, or 84.52.069 shall contain in substance the following:

"Shall the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?

Yes

No

Each voter shall indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 shall contain the following:

"Shall the (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of (insert the maximum rate) or less per thousand dollars of assessed valuation?"

Yes

No "

NEW SECTION. Sec. 3. This act applies to levies authorized after the effective date of this section.

Passed the House April 19, 1999.
Passed the Senate April 13, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 225

[Substitute House Bill 1204]

ENVIRONMENTAL PROJECTS COORDINATION—ADVISORY COMMITTEE

AN ACT Relating to coordination of environmental restoration and land acquisition; adding a new chapter to Title 43 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature that state agencies that provide environmental protection, restoration, enhancement, and mitigation by financing, or undertaking land acquisition, facility construction, or other activities be better coordinated with each other. Such coordination offers opportunities to jointly plan, finance, construct, permit, and operate facilities, to better address the needs of the environment on a local and regional basis, and to better address state-wide priorities to achieve the most beneficial and cost-effective results. The intent of the legislature is not to reduce or eliminate any environmental mitigation obligation of a government agency, but instead to more effectively meet that obligation through better coordination and identification of projects with highest environmental benefit.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means a committee advisory to the office consisting of representatives from the departments of community, trade, and economic development; ecology; fish and wildlife; natural resources; the parks and recreation commission; the interagency committee for outdoor recreation; the conservation commission; and the office of financial management. Other members may be added by majority vote of the committee. The governor, or the governor's designee, shall serve as chair of the advisory committee.

(2) "Environmental project" means land acquisition, facility construction, or other activity providing environmental protection, restoration, enhancement, or compensatory mitigation undertaken by state agencies or funded by state financial assistance programs. It does not mean the sale, transfer, exchange, or acquisition of trust lands managed by state agencies or regulatory environmental protection activities.

(3) "Office" means the environmental affairs office of the department of transportation.

(4) "Surplus real property" means any real property that is not needed by an agency now or in the foreseeable future.

NEW SECTION. Sec. 3. (1) The office shall provide a central depository for information collected under this chapter. This depository shall collect and disseminate pertinent information on environmental projects through electronic based systems that may include geographic information systems and internet functionality.

(2) By December 31, 1999, the governor's office shall provide a report to the appropriate committees of the legislature on the progress of the coordination program and the advisory committee.

(3) By October 31, 2000, the governor's office shall report to the appropriate committees of the legislature its findings and recommendations on coordination of environmental projects. The report shall include a description of the methods used to: Collect information on environmental projects, determine coordination opportunities, examine programs, and determine benefits and costs of recommended actions.

(4) Beginning with fiscal year 2001, and each fiscal year thereafter, state agencies that receive an appropriation in the capital budget or the transportation budget for an environmental project shall provide project information, including geographic location and general descriptive information, to the office no later than sixty days after the end of the fiscal year.

(5) Beginning with fiscal year 2003, and each fiscal year thereafter, state agencies that receive an appropriation in the omnibus appropriations act for an environmental project shall provide project information, including geographic location and general descriptive information, to the office no later than sixty days after the end of the fiscal year.

(6) Beginning with fiscal year 2005, and each fiscal year thereafter, all state agencies that have surplus real property available for sale, trade, lease, or reuse by other government entities shall provide information on those properties, including geographic location and general descriptive information, to the office no later than sixty days after the end of the fiscal year.

NEW SECTION. Sec. 4. The advisory committee is established to advise and assist the office in:

(1) Developing methods and data base systems that facilitate the collection and coordination of environmental project information.

(2) Examining state financial assistance programs that provide funding for environmental protection, enhancement, restoration, and mitigation. The advisory committee shall identify opportunities for improved coordination that would make it easier and more efficient for agencies and organizations seeking funding to: Locate the programs, apply for funding, seek and receive technical assistance, provide required financial reports, provide compliance and environmental monitoring information, and provide project related information such as site location.

(3) Investigating opportunities for improved coordination of financial assistance programs for environmental projects while complying with the statutory purpose and policy objective of these programs. Areas for possible improved coordination may include: Program information dissemination; application deadlines; state-wide, regional, and local priorities for environmental protection, enhancement, restoration, and mitigation; application forms and required application information; technical assistance; environmental reporting and monitoring; and project related data.

(4) Making recommendations on the role that other state agencies, federal, tribal, and local governments, nongovernmental organizations, and the general public can play in providing information that would result in increased coordination of environmental protection, restoration, enhancement, and mitigation activities. The advisory committee shall solicit comments from agencies and organizations that are eligible for state financial assistance programs and solicit comments from federal, tribal, and local organizations that provide financial assistance for environmental projects.

NEW SECTION. Sec. 5. Nothing in this chapter shall be interpreted in any manner by a state, federal, or local governmental agency to require any additional permitting review or approval process or compliance procedure from any nongovernmental entity or individual person.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 7. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in

the state transportation budget or the omnibus appropriations act, this act is null and void.

Passed the House March 16, 1999.

Passed the Senate April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 226

[House Bill 1420]

STATE INVESTMENT BOARD—CRIMINAL HISTORY CHECKS

AN ACT Relating to criminal history record checks of prospective appointees and employees of the state investment board; and adding a new section to chapter 43.33A RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.33A RCW to read as follows:

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board may require a criminal history record check for conviction records through the Washington state patrol criminal identification system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of prospective new appointees or employees for a board staff position exempt from the provisions of chapter 41.06 RCW, or any other position in which the employee will have authority for or access to funds under the jurisdiction or responsibility of the investment board, or to data security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.17 RCW.

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board.

Passed the House March 8, 1999.
Passed the Senate April 8, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 227

[House Bill 1421]

STATE INVESTMENT BOARD—COMMINGLED TRUST FUNDS

AN ACT Relating to the state investment board; and amending RCW 43.33A.170.

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

Sec. 1. RCW 43.33A.170 and 1982 c 58 s 1 are each amended to read as follows:

~~((There is established in the state treasury))~~ The state investment board ((commingled trust fund)) is authorized to establish commingled trust funds in the state treasury for the implementation of specific investment programs for any combination of funds under its jurisdiction. At the discretion of the state investment board, the funds under the jurisdiction of the board may participate in the investments made by the board through ~~((the))~~ state investment board commingled trust funds. The state investment board may establish accounts within ~~((the))~~ any such commingled trust fund as necessary for the implementation of specific investment programs. The combining of moneys from funds located outside the state treasury with moneys from funds located within the state treasury for investment under this section shall not affect the nature, character, or purpose of a participating fund.

Passed the House March 3, 1999.
Passed the Senate April 14, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 228

[House Bill 1422]

STATE INVESTMENT BOARD—SECURITIES' NOMINEE

AN ACT Relating to the state investment board; and amending RCW 43.33A.130.

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

Sec. 1. RCW 43.33A.130 and 1981 c 3 s 13 are each amended to read as follows:

The state treasurer may cause any securities in which the state investment board deals to be registered in the name of a nominee without mention of any fiduciary relationship, except that adequate records shall be maintained to identify the actual owner of the security so registered. The securities so registered shall be held in the physical custody of the state treasurer, the federal reserve system, the

designee of the state treasurer, or, at the election of the designee and upon approval of the state treasurer, the Depository Trust Company of New York City or its designees.

With respect to the securities, the nominee shall act only upon the order of the ~~((state treasurer who shall act only on the direction of the))~~ state investment board. All rights to the dividends, interest, and sale proceeds from the securities and all voting rights of the securities are vested in the actual owners of the securities, and not in the nominee.

Passed the House March 8, 1999.

Passed the Senate April 12, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 229

[Substitute House Bill 1494]

DIRECTOR OF GENERAL ADMINISTRATION

AN ACT Relating to the powers of the director of general administration; amending RCW 43.19.010; adding a new section to chapter 43.19 RCW; and repealing RCW 43.19.013.

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

Sec. 1. RCW 43.19.010 and 1993 c 472 s 19 are each amended to read as follows:

~~((The department of general administration shall be organized into divisions, which shall include (1) the division of capitol buildings, (2) the division of purchasing, (3) the division of engineering and architecture, and (4) the division of motor vehicle transportation service.))~~

The director of general administration shall ~~((have charge and general supervision))~~ be the executive head of the department of general administration. ~~((He or she may appoint and deputize such clerical and other assistants as may be necessary for the general administration of the department.))~~ The director shall be appointed by the governor with the consent of the senate, and shall serve at the pleasure of the governor. The director ~~((of general administration))~~ shall receive a salary in an amount fixed by the governor in accordance with RCW 43.03.040.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.19 RCW to read as follows:

(1) The director of general administration shall supervise and administer the activities of the department of general administration and shall advise the governor and the legislature with respect to matters under the jurisdiction of the department.

(2) In addition to other powers and duties granted to the director, the director shall have the following powers and duties:

(a) Enter into contracts on behalf of the state to carry out the purposes of this chapter;

(b) Accept and expend gifts and grants that are related to the purposes of this chapter, whether such grants be of federal or other funds;

(c) Appoint a deputy director and such assistant directors and special assistants as may be needed to administer the department. These employees are exempt from the provisions of chapter 41.06 RCW;

(d) Adopt rules in accordance with chapter 34.05 RCW and perform all other functions necessary and proper to carry out the purposes of this chapter;

(e) Delegate powers, duties, and functions as the director deems necessary for efficient administration, but the director shall be responsible for the official acts of the officers and employees of the department; and

(f) Perform other duties as are necessary and consistent with law.

(3) The director may establish additional advisory groups as may be necessary to carry out the purposes of this chapter.

(4) The internal affairs of the department shall be under the control of the director in order that the director may manage the department in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the director shall have complete charge and supervisory powers over the department. The director may create such administrative structures as the director deems appropriate, except as otherwise specified by law, and the director may employ such personnel as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law.

NEW SECTION. Sec. 3. RCW 43.19.013 (Deputy director) and 1967 c 27 s 1 are each repealed.

Passed the House March 10, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 230

[House Bill 1495]

REFUNDING BONDS

AN ACT Relating to refunding obligations; amending RCW 39.53.010, 39.53.020, 39.53.030, 39.53.040, 39.53.050, 39.53.060, 39.53.070, 39.53.080, 39.53.090, 39.53.110, 39.53.120, and 39.53.140; and creating a new section.

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

Sec. 1. RCW 39.53.010 and 1984 c 186 s 68 are each amended to read as follows:

Except where the context otherwise requires, the ~~((terms defined))~~ definitions in this section ~~((shall for all purposes have the meanings herein specified))~~ apply throughout this chapter:

(1) ~~("Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, board of regents, or other~~

legislative body of the public body designated herein in which body the legislative powers of the public body are vested: ~~PROVIDED, That with respect to the state it shall mean the state finance committee.~~

~~—(2) "Public body" means the state of Washington, its agencies, institutions, political subdivisions, and municipal and quasi municipal corporations now or hereafter existing under the laws of the state of Washington.~~

~~—(3)) "Bond" means any revenue bond or general obligation bond.~~

~~((4) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money issued by a public body or any predecessor of any public body and which is payable from designated revenues, special assessments, or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation.~~

~~—(5)) (2) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body which constitutes an indebtedness within the meaning of the constitutional debt limitation.~~

~~((6) "Advance refunding bonds" means bonds issued for the purpose of refunding bonds first subject to redemption or maturing one year or more from the date of the advance refunding bonds.~~

~~—(7)) (3) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, board of regents, or other legislative body of the public body designated herein in which the legislative powers of the public body are vested. With respect to the state, "governing body" means the state finance committee.~~

~~(4) "Government obligations" means any of the following: (a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and bank certificates of deposit secured by such obligations; (b) bonds, debentures, notes, participation certificates, or other obligations issued by the banks for cooperatives, the federal intermediate credit bank, the federal home loan bank system, the export-import bank of the United States, federal land banks, or the federal national mortgage association; (c) public housing bonds and project notes fully secured by contracts with the United States; and (d) obligations of financial institutions insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, to the extent insured or to the extent guaranteed as permitted under any other provision of state law.~~

~~(5) "Issuer" means the public body issuing any bond or bonds.~~

~~((8)) (6) "Ordinance" means an ordinance of a city or town, or ordinance, resolution or other instrument by which the governing body of the public body exercising any power ((hereunder)) under this chapter takes formal action and adopts legislative provisions and matters of some permanency.~~

~~((9) "Government obligations" means any of the following: (a) Direct obligations of, or obligations the principal of and interest on which are~~

unconditionally guaranteed by the United States of America and bank certificates of deposit secured by such obligations; (b) bonds, debentures, notes, participation certificates, or other obligations issued by the banks for cooperatives, the federal intermediate credit bank, the federal home loan bank system, the export-import bank of the United States, federal land banks, or the federal national mortgage association; (c) public housing bonds and project notes fully secured by contracts with the United States; and (d) obligations of financial institutions insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, to the extent insured or to the extent guaranteed as permitted under any other provision of state law.

— (~~(10) Words used herein importing singular or plural number may be construed so that one number includes both.~~) (7) "Public body" means the state of Washington, its agencies, institutions, political subdivisions, and municipal and quasi-municipal corporations now or hereafter existing under the laws of the state of Washington.

(8) "Refunding bonds" means bonds issued for the purpose of paying the principal of or redemption premiums or interest on any outstanding bonds of the issuer, its predecessor, or a related public body.

(9) "Refunding plan" means the plan adopted by an ordinance of a public body to issue refunding bonds and redeem the bonds to be refunded.

(10) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money that is payable from designated revenues, special assessments, or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation.

Sec. 2. RCW 39.53.020 and 1977 ex.s. c 262 s 1 are each amended to read as follows:

The governing body of any public body may by ordinance provide for the issuance of refunding bonds without an election (~~((to refund outstanding bonds heretofore or hereafter issued by such public body or its predecessor, only))~~) (1) in order to pay or discharge all or any part of (~~such~~) an outstanding series or issue of bonds, including any redemption premiums or interest thereon, in arrears or about to become due, and for which sufficient funds are not available, (2) when necessary or in the best interest of the public body (~~in order~~) to modify debt service or reserve requirements, sources of payment, covenants, or other terms of the bonds to be refunded, or (3) in order to effect a saving to the public body. To determine whether or not a saving will be effected, consideration shall be given to the interest to fixed maturities of the refunding bonds and the bonds to be refunded, the costs of issuance of the refunding bonds, including any sale discount, the redemption premiums, if any, to be paid, and the known earned income from the investment of the refunding bond proceeds pending redemption of the bonds to be refunded.

Sec. 3. RCW 39.53.030 and 1973 1st ex.s. c 25 s 2 are each amended to read as follows:

Any refunding bonds issued (~~for refunding purposes~~) may be delivered in exchange for the (~~outstanding~~) bonds (~~being~~) to be refunded or may be sold in such manner and at such price as the governing body may in its discretion determine advisable.

Sec. 4. RCW 39.53.040 and 1977 ex.s. c 262 s 2 are each amended to read as follows:

Bonds may be refunded (~~hereunder~~) under this chapter or under any other law of this state which authorizes the issuance of refunding bonds. In any (~~advance~~) refunding plan under this chapter the governing body shall provide irrevocably in the ordinance authorizing the issuance of the advance refunding bonds for the redemption or payment of the bonds to be refunded.

The ordinance authorizing the issuance of (~~advance~~) refunding bonds (~~pursuant to~~) under this chapter may contain such provisions for the redemption of the refunding bonds prior to maturity and for payment of a premium upon such redemption as the governing body (~~shall determine~~) in its discretion may determine advisable.

Sec. 5. RCW 39.53.050 and 1983 1st ex.s. c 69 s 1 are each amended to read as follows:

(~~Refunding bonds may be issued in a~~) The principal amount (~~in excess of~~) of refunding bonds may exceed the principal amount of the bonds to be refunded (~~in~~) by an amount deemed reasonably required to effect such refunding. The principal amount of the refunding bonds may be less than or the same as the principal amount of the bonds (~~being~~) to be refunded so long as provision is duly and sufficiently made for the retirement or redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded, or other available money, may be used to accomplish the refunding in accordance with the refunding plan. Reserves not so used shall be pledged as security for the refunding bonds to the extent the reserves, if any, are required. The balance of any such reserves may be used for any lawful purpose.

Sec. 6. RCW 39.53.060 and 1973 1st ex.s. c 25 s 4 are each amended to read as follows:

Prior to the application of the proceeds derived from the sale of (~~advance~~) refunding bonds to the purposes for which such bonds (~~shall~~) have been issued, such proceeds, together with any other funds the governing body may set aside for the payment of the bonds to be refunded, may be invested and reinvested only in government obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times as may be required to provide funds sufficient to pay principal, interest and redemption premiums, if any, in accordance with the (~~advance~~) refunding plan. To the extent incidental expenses have been capitalized, such bond proceeds may be used to defray such expenses.

Sec. 7. RCW 39.53.070 and 1973 1st ex.s. c 25 s 5 are each amended to read as follows:

The governing body may contract with respect to the safekeeping and application of the ~~((advance))~~ refunding bond proceeds and other funds included therewith and the income therefrom including the right to appoint a trustee which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. The governing body may provide in the refunding plan that until such moneys are required to redeem or retire the ~~((general obligation or revenue))~~ bonds to be refunded, the refunding bond proceeds and other funds, and the income therefrom shall be used to pay and secure the payment of the principal of and interest on the ~~((advance))~~ refunding bonds. The governing body may additionally pledge for the payment of ~~((such))~~ revenue refunding bonds any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type ~~((being))~~ to be refunded. Provisions must be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled.

Sec. 8. RCW 39.53.080 and 1965 ex.s. c 138 s 9 are each amended to read as follows:

When a public body has irrevocably set aside for and pledged to the payment of revenue bonds to be refunded ~~((advance))~~ refunding bond proceeds and other moneys in amounts which together with known earned income from the investment thereof are sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the ~~((advance))~~ refunding revenue bonds shall be payable from any source which, either at the time of the issuance of the ~~((advance))~~ refunding bonds or the revenue bonds to be refunded, might legally be or have been pledged for the payment of the revenue bonds to be refunded to the extent it may legally do so, notwithstanding the pledge of such revenues for the payment of the ~~((outstanding))~~ ~~((being))~~ to be refunded.

Sec. 9. RCW 39.53.090 and 1965 ex.s. c 138 s 10 are each amended to read as follows:

The various annual maturities of general obligation refunding bonds issued to refund voted general obligation bonds shall not extend over a longer period of time than the bonds to be refunded. Such maturities may be changed in amount or shortened in term if the estimated respective annual principal and interest requirements of the refunding bonds, computed upon the anticipated effective interest rate the governing body shall in its discretion determine will be borne by such bonds, will not exceed the respective annual principal and interest requirements of the bonds ~~((being))~~ to be refunded~~((--PROVIDED, That))~~, except the issuer may increase the principal amount of annual maturities for the purpose of rounding out maturities to the nearest five thousand dollars.

Sec. 10. RCW 39.53.110 and 1965 ex.s. c 138 s 12 are each amended to read as follows:

~~((Bonds for refunding))~~ Refunding bonds and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one or more series or issues by the same issuer.

Sec. 11. RCW 39.53.120 and 1965 ex.s. c 138 s 13 are each amended to read as follows:

Except as specifically provided in this chapter, refunding bonds issued ~~((hereunder))~~ under this chapter shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer ~~((being))~~ to be refunded, ~~((either))~~ at the time of the issuance of either the refunding bonds or the bonds to be refunded.

Sec. 12. RCW 39.53.140 and 1974 ex.s. c 111 s 4 are each amended to read as follows:

~~((The state))~~ Any public body may issue general obligation refunding bonds to refund any ~~((special revenue or limited obligations of the state))~~ general obligation or revenue bonds of such issuer or its agencies ~~((at or prior to the date they mature or are subject to redemption))~~ or instrumentalities. The payment of ~~((such refunding))~~ general obligation refunding bonds may be additionally secured by a pledge of the revenues pledged to the payment of the ~~((special revenue or limited obligations))~~ revenue bonds to be refunded.

If the payment of ~~((such special revenue obligations))~~ revenue bonds to be refunded ~~((as))~~ by general obligation bonds of the state is secured by (1) fees collected by the state as license fees for motor vehicles, or (2) excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel, or (3) interest on the permanent school fund, then the state shall also pledge to the payment of such refunding bonds the same fees, excise taxes, or interest that were pledged to the payment of the ~~((special revenue obligations being))~~ revenue bonds to be refunded.

Any public body may issue revenue refunding bonds to refund any general obligation of such issuer or its agencies or instrumentalities if the bonds to be refunded were issued for purposes for which those revenue refunding bonds could be issued.

NEW SECTION. Sec. 13. The authority of a public body to issue refunding bonds pursuant to this act is additional to any existing authority to issue such bonds and nothing in this act shall prevent the issuance of such bonds pursuant to any other law, and this act shall not be construed to amend any existing law authorizing the issuance of refunding bonds by a public body.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 10, 1999.
Passed the Senate April 12, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 231

[House Bill 1556]

FIRE DEATH REPORTS

AN ACT Relating to reporting of deaths or injuries from fire; and amending RCW 48.48.065.

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

Sec. 1. RCW 48.48.065 and 1995 c 369 s 29 are each amended to read as follows:

(1) The chief of each organized fire department, or the sheriff or other designated county official having jurisdiction over areas not within the jurisdiction of any fire department, shall report statistical information and data to the chief of the Washington state patrol, through the director of fire protection, on each fire occurring within the official's jurisdiction and, within two business days, report any death resulting from fire. Reports shall be consistent with the national fire incident reporting system developed by the United States fire administration and rules established by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, and the department of natural resources shall jointly determine the statistical information to be reported on fires on land under the jurisdiction of the department of natural resources.

(2) The chief of the Washington state patrol, through the director of fire protection, shall analyze the information and data reported, compile a report, and distribute a copy annually by ~~((May))~~ July 1st to each chief fire official in the state. Upon request, the chief of the Washington state patrol, through the director of fire protection, shall also furnish a copy of the report to any other interested person at cost.

(3) In carrying out the duties relating to collecting, analyzing, and reporting statistical fire data, the fire protection policy board may purchase statistical fire data from a qualified individual or organization. The information shall meet the diverse needs of state and local fire reporting agencies and shall be (a) defined in understandable terms of common usage in the fire community; (b) adaptable to the varying levels of resources available; (c) maintained in a manner that will foster both technical support and resource sharing; and (d) designed to meet both short and long-term needs.

Passed the House April 19, 1999.
Passed the Senate April 7, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 232

[House Bill 1642]

WATER RIGHTS PERMITS—DIVERSION

AN ACT Relating to surface water permits and rights; amending RCW 90.03.030; and adding new sections to chapter 90.03 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 90.03 RCW to read as follows:

The legislature intends to allow modification of the point of diversion in a water right permit when such a modification will provide both environmental benefits and water supply benefits and nothing in section 2 of this act is to be construed as allowing any other change or transfer of a right to the use of surface water which has not been applied to a beneficial use.

NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW to read as follows:

The department may approve a change of the point of diversion prescribed in a permit to appropriate water for a beneficial use to a point of diversion that is located downstream and is an existing approved intake structure with capacity to transport the additional diversion, if the ownership, purpose of use, season of use, and place of use of the permit remain the same.

This section may not be construed as limiting in any manner whatsoever other authorities of the department under RCW 90.03.380 or other changes that may be approved under RCW 90.03.380 under authorities existing before the effective date of this section.

Sec. 3. RCW 90.03.030 and 1987 c 109 s 68 are each amended to read as follows:

Any person may convey any water which he or she may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary highwater mark, without making just compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the department, upon the application of any person interested. Water conveyed under this section may be conveyed to an approved intake structure located in a neighboring state in order to accomplish an approved modification of the point of diversion in a permit to appropriate water for a beneficial use, if approval of the neighboring state is documented to the satisfaction of the department.

Passed the House April 20, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 233

[Substitute House Bill 1647]

RECORDING DOCUMENTS

AN ACT Relating to recording documents; amending RCW 4.28.320, 36.18.005, 36.18.010, 4.28.325, 47.28.025, 60.44.030, 60.68.045, 61.16.030, 64.32.120, 65.04.015, 65.04.020, 65.04.045, 65.04.047, 65.04.060, 65.08.060, 65.08.140, 65.08.160, 84.26.080, 84.33.120, 84.33.140, 84.34.108, and 84.56.330; adding a new section to chapter 65.04 RCW; and providing an effective date.

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

Sec. 1. RCW 4.28.320 and 1893 c 127 s 17 are each amended to read as follows:

In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a writ of attachment of property shall be issued, or at any time afterwards, the plaintiff or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: **PROVIDED, HOWEVER,** That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be ~~((made by an indorsement to that effect on the margin of the record))~~ evidenced by the recording of the court order.

Sec. 2. RCW 36.18.005 and 1991 c 26 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) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Multiple transactions" means a document that contains two or more titles and/or two or more transactions requiring multiple indexing.

Sec. 3. RCW 36.18.010 and 1996 c 143 s 1 are each amended to read as follows:

County auditors or recording officers shall collect the following fees for their official services:

For recording instruments, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar(±). The fee for recording multiple transactions contained in one instrument will be calculated ((individually)) for each transaction requiring separate indexing as required under RCW 65.04.050 as follows: The fee for each title or transaction is the same fee as the first page of any additional recorded document; the fee for additional pages is the same fee as for any additional pages for any recorded document; the fee for the additional pages may be collected only once and may not be collected for each title or transaction;

For preparing and certifying copies, for the first page eight and one-half by fourteen inches or less, three dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

For preparing noncertified copies, for each page eight and one-half by fourteen inches or less, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records not listed above, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170.

For recording an emergency nonstandard document as provided in RCW 65.04.047, fifty dollars, in addition to all other applicable recording fees.

Sec. 4. RCW 4.28.325 and 1963 c 137 s 1 are each amended to read as follows:

In an action in a United States district court for any district in the state of Washington affecting the title to real property in the state of Washington, the plaintiff, at the time of filing the complaint, or at any time afterwards, or a defendant, when he sets up an affirmative cause of action in his answer, or at any time afterward, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled (~~(of record)~~), in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be (~~(made by an indorsement to that effect on the margin of the record)~~) evidenced by the recording of the court order.

Sec. 5. RCW 47.28.025 and 1984 c 7 s 165 are each amended to read as follows:

Whenever the department establishes the location, width, and lines of any new highway, or declares any such new highway as a limited access facility and schedules the acquisition of the right of way for the highway or facility within the ensuing two years, it may cause the description and plan of any such highway to be made, showing the center line of the highway and the established width thereof, and attach thereto a certified copy of the resolution. Such description, plan, and resolution shall then be recorded in the office of the county auditor of the proper

county ((in a separate book kept for such purposes, which shall be furnished to the county auditor of the county by the department at the expense of the state)).

Sec. 6. RCW 60.44.030 and 1937 c 69 s 3 are each amended to read as follows:

The county auditor shall record the claims mentioned in this chapter ((in a book to be kept by him for that purpose)), which record must be indexed as deeds and other conveyances are required by law to be indexed.

Sec. 7. RCW 60.68.045 and 1992 c 133 s 3 are each amended to read as follows:

(1) When a notice of a tax lien is recorded under RCW 60.68.015(2), the county auditor shall forthwith enter it in ((an alphabetical tax lien index to be provided by the board of county commissioners)) the general index showing ((on one line)) the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of recording, and the amount of tax and penalty assessed. The auditor shall have the ability to produce a separate tax lien index listing.

(2) When a notice of a tax lien is filed under RCW 60.68.015(3), the department of licensing shall enter it in the uniform commercial code filing system showing the name and address of the taxpayer as the debtor, and the internal revenue service as a secured party, and include the collector's serial number of the notice, the date and hour of filing, and the amount of tax and penalty assessed.

Sec. 8. RCW 61.16.030 and 1995 c 62 s 15 are each amended to read as follows:

If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to ((cancel said mortgage, and the auditor shall)) immediately record the order ((and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded)).

Sec. 9. RCW 64.32.120 and 1965 ex.s. c 11 s 4 are each amended to read as follows:

Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume((:)) and page ((and)) or county auditor's ((receiving)) recording number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter.

Sec. 10. RCW 65.04.015 and 1998 c 27 s 3 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) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering or transmitting electronically an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "~~((Record location))~~ Recording number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

(5) "Grantor/grantee" for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public.

(6) "Legible and capable of being imaged" means all text, seals, drawings, signatures, or other content within the document must be legible and capable of producing a readable image, regardless of what process is used for recording.

Sec. 11. RCW 65.04.020 and 1985 c 44 s 14 are each amended to read as follows:

For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such ~~((books))~~ media for records as the business of the office requires.

Sec. 12. RCW 65.04.045 and 1998 c 27 s 1 are each amended to read as follows:

(1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall (~~only~~) be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, (~~including~~) and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or section, township, (~~and~~) range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is imaged all text is readable. Further, all (~~instruments~~) pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged(~~and~~), No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....
Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

Sec. 13. RCW 65.04.047 and 1998 c 27 s 2 are each amended to read as follows:

(1) If the first page of an instrument presented for recording does not contain the information required by RCW 65.04.045(1), the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

~~((WASHINGTON STATE COUNTY AUDITOR/RECORDER'S
INDEXING FORM))~~

Return Address

Please print or type information

Document Title(s) (or transactions contained therein):

- 1.
- 2.
- 3.
- 4.

Grantor(s) (Last name first, then first name and initials)

- 1.
- 2.
- 3.
- 4.

5. Additional names on page __ of document.

Grantee(s) (Last name first, then first name and initials)

- 1.
- 2.
- 3.
- 4.

5. Additional names on page __ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Additional legal description is on page __ of document.

Assessor's Property Tax Parcel or Account Number at the time of recording:

Reference Number(s) of Documents assigned or released:

Additional references on page __ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

(2) Documents which are exempt from format requirements and which may be recorded with a properly completed cover sheet include: Documents which were signed prior to January 1, 1997; military separation documents; documents executed outside of the United States; certified copies of documents; any birth or death certificate; marriage certificates from outside the state of Washington; any document, one of whose original signer is deceased or otherwise incapacitated; and judgments or other documents formatted to meet court requirements.

NEW SECTION. Sec. 14. A new section is added to chapter 65.04 RCW to read as follows:

(1) Documents which must be recorded immediately and which do not meet margin and font size requirements may be recorded for an additional fee of fifty dollars. Documents which do not meet legibility requirements must not be recorded as a nonstandard recording.

(2) In addition to preparing a properly completed cover sheet as described in RCW 65.04.047, the person preparing the document for recording must sign a statement which must be attached to the document and which must read substantially as follows: "I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document."

Sec. 15. RCW 65.04.060 and 1985 c 44 s 17 are each amended to read as follows:

Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note, in ~~((both the indices, in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded liens, mortgage, transcript of judgment, mechanic's liens, or other incumbrance whatsoever, the auditor shall note the same in index of transcripts of judgment))~~ the comment section of the index, the recording number of the original mortgage, bond, lien, or instrument.

Sec. 16. RCW 65.08.060 and 1984 c 73 s 1 are each amended to read as follows:

(1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor ~~((of the county))~~ or, in charter counties, the county official charged with the responsibility for recording instruments in the county records.

Sec. 17. RCW 65.08.140 and 1927 c 278 s 9 are each amended to read as follows:

A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page or recording number where the instrument is actually of record.

Sec. 18. RCW 65.08.160 and 1967 c 148 s 1 are each amended to read as follows:

A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall

record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages or recording number where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in ~~((subdivision))~~ subsection (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

Sec. 19. RCW 84.26.080 and 1986 c 221 s 6 are each amended to read as follows:

(1) When property has once been classified and valued as eligible historic property, it shall remain so classified and be granted the special valuation provided by RCW 84.26.070 for ten years or until the property is disqualified by:

- (a) Notice by the owner to the assessor to remove the special valuation;
- (b) Sale or transfer to an ownership making it exempt from property taxation;

or

(c) Removal of the special valuation by the assessor upon determination by the local review board that the property no longer qualifies as historic property or that the owner has failed to comply with the conditions established under RCW 84.26.050.

(2) The sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner does not disqualify the property from the special valuation provided by RCW 84.26.070 if:

(a) The property continues to qualify as historic property; and

(b) The new owner files a notice of compliance with the assessor of the county in which the property is located. Notice of compliance forms shall be prescribed by the state department of revenue and supplied by the county assessor. The notice shall contain a statement that the new owner is aware of the special valuation and of the potential tax liability involved when the property ceases to be valued as historic property under this chapter. The signed notice of compliance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.120. If the notice of compliance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to RCW 84.26.090 shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of specially valued historic property for filing or recording unless the new owner has signed the notice of compliance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer.

(3) When the property ceases to qualify for the special valuation the owner shall immediately notify the state or local review board.

(4) Before the additional tax or penalty imposed by RCW 84.26.090 is levied, in the case of disqualification, the assessor shall notify the taxpayer by mail, return receipt requested, of the disqualification.

Sec. 20. RCW 84.33.120 and 1997 c 299 s 1 are each amended to read as follows:

(1) In preparing the assessment rolls as of January 1, 1982, for taxes payable in 1983 and each January 1st thereafter, the assessor shall list each parcel of forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (2) of this section and shall compute the assessed value of the land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. Values for the several grades of bare forest land shall be as follows.

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
	1	\$141
1	2	136
	3	131
	4	95

	1	118
2	2	114
	3	110
	4	80
<hr/>		
	1	93
3	2	90
	3	87
	4	66
<hr/>		
	1	70
4	2	68
	3	66
	4	52
<hr/>		
	1	51
5	2	48
	3	46
	4	31
<hr/>		
	1	26
6	2	25
	3	25
	4	23
<hr/>		
	1	12
7	2	12
	3	11
	4	11
<hr/>		
8		1

(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.05 RCW, the forest land values contained in subsection (1) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his or her use in preparing the assessment rolls as of January 1, 1982. For the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him or her by the department of revenue, and he or she shall compute the assessed value of such land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. In preparing the assessment roll for 1975 and each year thereafter, the assessor shall assess and value as classified forest land all forest land that is not then designated pursuant to RCW 84.33.120(4) or 84.33.130 and shall make a notation of such classification upon the assessment and tax rolls. On or before January 15 of the first year in which such notation is made, the assessor shall mail notice by certified mail to the owner that such land has been classified as forest land and is subject to the compensating tax imposed by this section. If the owner desires not to have such land assessed and valued as classified forest land, he or she shall give the assessor written notice thereof on or before March 31 of such year and the assessor shall remove from the assessment and tax rolls the classification notation entered pursuant to this subsection, and shall thereafter assess and value such land in the manner provided by law other than this chapter 84.33 RCW.

(4) In any year commencing with 1972, an owner of land which is assessed and valued by the assessor other than pursuant to the procedures set forth in RCW 84.33.110 and this section, and which has, in the immediately preceding year, been assessed and valued by the assessor as forest land, may appeal to the county board of equalization by filing an application with the board in the manner prescribed in subsection (2) of RCW 84.33.130. The county board shall afford the applicant an opportunity to be heard if the application so requests and shall act upon the application in the manner prescribed in subsection (3) of RCW 84.33.130.

(5) Land that has been assessed and valued as classified forest land as of any year commencing with 1975 assessment year or earlier shall continue to be so

assessed and valued until removal of classification by the assessor only upon the occurrence of one of the following events:

(a) Receipt of notice from the owner to remove such land from classification as forest land;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that, because of actions taken by the owner, such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from classification if a governmental agency, organization, or other recipient identified in subsection (9) or (10) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in classified forest land by means of a transaction that qualifies for an exemption under subsection (9) or (10) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the classified land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(d) Determination that a higher and better use exists for such land than growing and harvesting timber after giving the owner written notice and an opportunity to be heard;

(e) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (7) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (7) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals.

The assessor shall remove classification pursuant to (c) or (d) of this subsection prior to September 30 of the year prior to the assessment year for which termination of classification is to be effective. Removal of classification as forest land upon occurrence of (a), (b), (d), or (e) of this subsection shall apply only to

the land affected, and upon occurrence of (c) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber: PROVIDED, That any remaining classified forest land meets necessary definitions of forest land pursuant to RCW 84.33.100.

(6) Within thirty days after such removal of classification as forest land, the assessor shall notify the owner in writing setting forth the reasons for such removal. The owner of such land shall thereupon have the right to apply for designation of such land as forest land pursuant to subsection (4) of this section or RCW 84.33.130. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(7) Unless the owner successfully applies for designation of such land or unless the removal is reversed on appeal, notation of removal from classification shall immediately be made upon the assessment and tax rolls, and commencing on January 1 of the year following the year in which the assessor made such notation, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (5)(e), (9), or (10) of this section and unless the assessor shall not have mailed notice of classification pursuant to subsection (3) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years, commencing with assessment year 1975, for which such land was assessed and valued as forest land.

(8) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from classification as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(9) The compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(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) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (7) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes; or

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of such land.

(10) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) An action described in subsection (9) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner.

(11) With respect to any land that has been designated prior to May 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may, prior to January 1, 1975, on his or her own motion or pursuant to petition by the owner, change, without imposition of the compensating tax provided under RCW 84.33.140, the status of such designated land to classified forest land.

Sec. 21. RCW 84.33.140 and 1997 c 299 s 2 are each amended to read as follows:

(1) When land has been designated as forest land pursuant to RCW 84.33.120(4) or 84.33.130, a notation of such designation shall be made each year upon the assessment and tax rolls, a copy of the notice of approval together with the legal description or assessor's tax lot numbers for such land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are

recorded, and such land shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120 until removal of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove such designation;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) Such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (5) or (6) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in designated forest land by means of a transaction that qualifies for an exemption under subsection (5) or (6) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

Removal of designation upon occurrence of any of (a) through (c) of this subsection shall apply only to the land affected, and upon occurrence of (d) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber, without regard to other land that may have been included in the same application and approval for designation: PROVIDED, That any remaining designated forest land meets necessary definitions of forest land pursuant to RCW 84.33.100.

(2) Within thirty days after such removal of designation of forest land, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal a copy of the notice of removal with notation of the action, if any, upon appeal, together with the legal description or assessor's tax lot numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and commencing on January 1 of the year following the year in which the assessor mailed such notice, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (1)(c), (5), or (6) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years for which such land was designated as forest land.

(4) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The compensating tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(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) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (3) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes; or

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of such land.

(6) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (3) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (1) of this section resulted solely from:

(a) An action described in subsection (5) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner.

Sec. 22. RCW 84.34.108 and 1992 c 69 s 12 are each amended to read as follows:

(1) When land has once been classified under this chapter, a notation of such classification shall be made each year upon the assessment and tax rolls and such land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of such classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of such classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends

to or is required by law or regulation to resell the property for the same use as before, making all or a portion of such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.120, as now or hereafter amended. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of such land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether such land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Within thirty days after such removal of all or a portion of such land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to full market value on the date of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (5) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of such an additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land", "farm and agricultural land", or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of such additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which such additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(4) Additional tax, applicable interest, and penalty, shall become a lien on such land which shall attach at the time such land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as hereafter amended. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The additional tax, applicable interest, and penalty specified in subsection (3) of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of such land;

(e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections: PROVIDED, That at such time as these property

interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (3) of this section shall be imposed; or

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(d).

Sec. 23. RCW 84.56.330 and 1961 c 15 s 84.56.330 are each amended to read as follows:

Any person who has a lien by mortgage or otherwise, upon any real property upon which any taxes have not been paid, may pay such taxes, and the interest, penalty and costs thereon; and the receipt of the county treasurer or other collecting official shall constitute an additional lien upon such land, to the amount therein stated, and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument shall be collectible with, or as a part of, and in the same manner as the amount secured by the original lien: PROVIDED, That the person paying such taxes shall pay the same as mortgagee or other lien holder and shall procure the receipt of the county treasurer therefor, showing the mortgage or other lien relationship of the person paying such taxes, and the same shall have been recorded with the county auditor of the county wherein the said real estate is situated, within ten days after the payment of such taxes and the issuance of such receipt. It shall be the duty of any treasurer issuing such receipt to make notation thereon of the lien relationship claim of the person paying such taxes. It shall be the duty of the county auditor in such cases to index and record such receipts in the same manner as provided for the recording of liens on real estate, upon the payment to the county auditor of the ~~((sum of fifty cents))~~ appropriate recording fees by the person presenting the same for recording: AND PROVIDED FURTHER, That in the event the above provision be not complied with, the lien created by any such payment shall be subordinate to the liens of all mortgages or encumbrances upon such real property, which are senior to the mortgage or other lien of the person so making such payment.

NEW SECTION. Sec. 24. This act takes effect August 1, 1999.

Passed the House April 19, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 234

[Substitute House Bill 1677]

IRRIGATION DISTRICTS—ADMINISTRATION

AN ACT Relating to the administration of irrigation districts; and adding new sections to chapter 87.03 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 87.03 RCW to read as follows:

(1) Any irrigation district organized under this chapter may, for compensation, reimbursement, or otherwise, within limits established by the state Constitution, assist the owners of land receiving water distributed by the irrigation district or discharging, with the district's approval, water from the land into irrigation district-maintained facilities to finance, acquire, install, lease, and use equipment, fixtures, programs, and systems to conserve, improve, preserve, and efficiently use the land, water delivered by the irrigation district, or water discharged from the land into irrigation district-maintained facilities. Assistance may include, but is not limited to, grants, loans, and financing to purchase, lease, install, and use approved conservation, improvement, and preservation equipment, fixtures, programs, and systems. The equipment, fixtures, programs, and systems may be leased, purchased, or installed by a private business, the owner of the land, or the irrigation district. "Conserve," "improve," and "preserve" as used in this section, include enhancing the quality of water delivered by the irrigation district or discharged from the land into irrigation district-maintained facilities.

(2) The district may charge the owner and the land if district money or credit is used or extended to provide the assistance in subsection (1) of this section. The district's board of directors may also levy and fix assessments, rates, tolls, and charges and collect them from all persons for whom, and all land on which, district money or credit is provided, or the board may require landowner repayment for landowner assistance by assessments, charges, rates, or tolls in the same manner as provided by RCW 87.03.445.

NEW SECTION. Sec. 2. A new section is added to chapter 87.03 RCW to read as follows:

(1) Purchases of any materials, supplies, or equipment by the district shall be based on competitive bids except as provided in RCW 87.03.435 and 39.04.280. A formal sealed bid procedure shall be used as standard procedure for the purchases made by irrigation districts. However, the board may by resolution adopt a policy to waive formal sealed bidding procedures for purchases of any materials, supplies, or equipment for an amount set by the board not to exceed ten thousand dollars for each purchase.

(2) The directors may by resolution adopt a policy to use the process provided in RCW 39.04.190 for purchases of materials, supplies, or equipment when the estimated cost is between the amount established by the board under subsection (1) of this section and a maximum amount set by resolution adopted by the board for purchases up to fifty thousand dollars exclusive of sales tax.

Passed the House April 19, 1999.

Passed the Senate April 13, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 235

[Second Substitute House Bill 1716]

WARM WATER FISH CULTURE

AN ACT Relating to warm water fish culture; amending RCW 77.44.050 and 77.32.440; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 77.44.050 and 1996 c 222 s 5 are each amended to read as follows:

The warm water game fish account is hereby created in the state wildlife fund. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the warm water game fish enhancement program, including the development of warm water pond and lake habitat, culture of warm water game fish, improvement of warm water fish habitat, management of warm water fish populations, and other practical activities that will improve the fishing for warm water fish. Funds ~~((from the))~~ for warm water game fish ~~((surcharge))~~ as provided in RCW 77.32.440 shall not serve as replacement funding for department-operated warm water fish projects existing on December 31, 1994~~((Funds from the warm water game fish account shall not be used for the operation or construction of the warm water fish culture project at Ringold unless specifically authorized by legislation.~~

~~— Funds from the sale of the warm water game fish surcharges shall be deposited in the warm water game fish account), except that an amount not to exceed ninety-one thousand dollars may be used for warm water fish culture at the Rod Meseberg warm water fish production facility during the biennium ending June 30, 2001.~~

Sec. 2. RCW 77.32.440 and 1998 c 191 s 13 are each amended to read as follows:

(1) The commission shall adopt rules to continue funding current enhancement programs at levels equal to the participation of licensees in each of the individual enhancement programs. All enhancement funding will continue to be deposited directly into the individual accounts created for each enhancement.

(2) In implementing subsection (1) of this section with regard to warm water game fish, the department shall ~~((initially))~~ deposit in the warm water game fish account ~~((6.5-12 percent of the funds received from the sale of each freshwater license and each freshwater, saltwater, and shellfish combination license. The percentage initially))~~ the sum of one million two hundred fifty thousand dollars each fiscal year during the fiscal years 1999 and 2000, based on two hundred fifty thousand warm water anglers. Beginning in fiscal year 2001, and each year thereafter, the deposit to the warm water game fish account established in this subsection shall be adjusted annually to reflect the actual numbers of license holders fishing for warm water game fish based on an annual survey of licensed anglers from the previous year conducted by the department beginning with the April 1, ((2000)) 1999, to March 31, ((2001)) 2000, license year survey. ((The

legislature expects that implementing this subsection will result in annual deposits of at least one million two hundred fifty thousand dollars into the warm water game fish account:))

NEW SECTION. Sec. 3. If specific funding for the purposes of section 1 of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, section 1 of this act is null and void.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House April 20, 1999.

Passed the Senate April 15, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 236

[Substitute House Bill 1777]

TECHNICAL ASSISTANCE DOCUMENTS—DEFINITION

AN ACT Relating to technical assistance documents; and amending RCW 43.05.010.

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

Sec. 1. RCW 43.05.010 and 1995 c 403 s 602 are each amended to read as follows:

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

(1) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law or rules. The term does not include any criminal penalty, damage assessments, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

(2) "Regulatory agency" means an agency as defined in RCW 34.05.010 that has the authority to issue civil penalties. The term does not include the state patrol or any institution of higher education as defined in RCW 28B.10.016.

(3) "Technical assistance" includes:

(a) Information on the laws, rules, and compliance methods and technologies applicable to the regulatory agency's programs;

(b) Information on methods to avoid compliance problems;

(c) Assistance in applying for permits; and

(d) Information on the mission, goals, and objectives of the program.

(4) "Technical assistance documents" means documents prepared to provide information specified in subsection (3) of this section entitled a technical assistance document by the agency head or its designee. Technical assistance documents do not include notices of correction, violation, or enforcement action. Technical assistance documents do not impose mandatory obligations or serve as the basis for a citation.

Passed the House March 15, 1999.
Passed the Senate April 12, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 237

[Substitute House Bill 1826]

WATER MASTERS—APPOINTMENT

AN ACT Relating to water masters; and amending RCW 90.03.060.

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

Sec. 1. RCW 90.03.060 and 1987 c 109 s 69 are each amended to read as follows:

(1) Water masters shall be appointed by the department whenever it shall find the interests of the state or of the water users to require them. The districts for or in which the water masters serve shall be designated water master districts, which shall be fixed from time to time by the department, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no district shall be created or continued where the need for the same does not exist. Water masters shall be supervised by the department, shall be compensated for services from funds of the department, and shall be technically qualified to the extent of understanding the elementary principals of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Counties and municipal and public corporations of the state are authorized to contribute moneys to the department to be used as compensation to water masters in carrying out their duties. All such moneys received by the department shall be used exclusively for said purpose.

(2) A water master may be appointed by the department for a watershed management area for which a plan adopted by a planning unit and by the counties with territory in the watershed management area under RCW 90.82.130 contains a requirement or request that a water master be appointed, subject to availability of state or nonstate funding.

Passed the House April 20, 1999.
Passed the Senate April 15, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 238

[Engrossed Substitute House Bill 2090]
SELLERS OF TRAVEL—REGULATION

AN ACT Relating to sellers of travel; and amending RCW 19.138.030, 19.138.040, 19.138.100, 19.138.120, 19.138.130, 19.138.140, and 19.138.170.

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

Sec. 1. RCW 19.138.030 and 1996 c 180 s 2 are each amended to read as follows:

A seller of travel shall not advertise that any travel services are or may be available unless he or she has, prior to the advertisement, determined that the product advertised was available at the time the advertising was placed. This determination can be made by the seller of travel either by use of an airline computer reservation system, or by written confirmation from the vendor whose program is being advertised.

It is the responsibility of the seller of travel to keep written or printed documentation of the steps taken to verify that the advertised offer was available at the time the advertising was placed. These records are to be maintained for at least ~~((two))~~ one year~~((s))~~ after the placement of the advertisement.

Sec. 2. RCW 19.138.040 and 1996 c 180 s 3 are each amended to read as follows:

At or prior to the time of full or partial payment for any travel services, the seller of travel shall furnish to the person making the payment a written statement conspicuously setting forth the information contained in subsections (1) through (6) of this section. However, if ~~((the sale of travel services is made over the telephone or by other electronic media and payment is made by credit or debit card))~~ payment is made other than in person, the seller of travel shall transmit to the person making the payment the written statement required by this section within three business days of ~~((the consumer's credit or debit card authorization))~~ receipt or processing of the payment. The written statement shall contain the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The registration number of the seller of travel required by this chapter.

(4) The name of the vendor with whom the seller of travel has contracted to provide travel arrangements for a consumer and all pertinent information relating to the travel as known by the seller of travel at the time of booking. The seller of travel will make known further details as soon as received from the vendor. All information will be provided with final documentation.

(5) ~~((The conditions, if any, upon which the contract between the seller of travel and the passenger may be canceled, and the rights and obligations of all parties in the event of cancellation.))~~ An advisory regarding the penalties that

would be charged in the event of a cancellation or change by the customer. This may contain either: (a) The specific amount of cancellation and change penalties; or (b) the following statement: "Cancellation and change penalties apply to these arrangements. Details will be provided upon request."

(6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the seller of travel, all sums paid to the seller of travel for services not performed in accordance with the contract between the seller of travel and the purchaser will be refunded within thirty days of receiving the funds from the vendor with whom the services were arranged, or if the funds were not sent to the vendor, the funds shall be returned within fourteen days after cancellation by the seller of travel to the purchaser unless the purchaser requests the seller of travel to apply the money to another travel product and/or date."

Sec. 3. RCW 19.138.100 and 1996 c 180 s 4 are each amended to read as follows:

No person, firm, or corporation may act or hold itself out as a seller of travel unless, prior to engaging in the business of selling or advertising to sell travel services, the person, firm, or corporation registers with the director under this chapter and rules adopted under this chapter.

(1) ~~The registration number must be conspicuously posted in the place of business and must be included in all advertisements. ((Any corporation which issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by such corporation including any wholly owned subsidiary of such corporation are not required to include company registration numbers in advertisements.))~~ Sellers of travel are not required to include registration numbers on institutional advertising. For the purposes of this subsection, "institutional advertising" is advertising that does not include prices or dates for travel services.

(2) The director shall issue duplicate registrations upon payment of a ~~((nominal))~~ duplicate registration fee to valid registration holders operating more than one office. The duplicate registration fee for each office shall be an amount equal to the original registration fee.

(3) No registration is assignable or transferable.

(4) If a registered seller of travel sells his or her business, when the new owner becomes responsible for the business, the new owner must comply with all provisions of this chapter, including registration.

(5) If a seller of travel is employed by or under contract as an independent contractor or an outside agent of a seller of travel who is registered under this chapter, the employee, independent contractor, or outside agent need not also be registered if:

(a) The employee, independent contractor, or outside agent is conducting business as a seller of travel in the name of and under the registration of the registered seller of travel; and

(b) All money received for travel services by the employee, independent contractor, or outside agent is collected in the name of the registered seller of travel and ~~((deposited directly into))~~ processed by the registered seller of ~~((travel's trust account))~~ travel as required under this chapter.

Sec. 4. RCW 19.138.120 and 1994 c 237 s 5 are each amended to read as follows:

(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 RCW 19.138.130, 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.

Sec. 5. RCW 19.138.130 and 1997 c 58 s 852 are each amended to read as follows:

(1) The director may deny, suspend, or revoke the registration of a seller of travel if the director finds that the applicant:

(a) Was previously the holder of a registration issued under this chapter, and the registration was revoked for cause and never reissued by the director, or the registration was suspended for cause and the terms of the suspension have not been fulfilled;

(b) Has been found guilty of a felony within the past ~~((five))~~ ten years involving moral turpitude, or of a misdemeanor concerning fraud or conversion, or suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion;

(c) Has made a false statement of a material fact in an application under this chapter or in data attached to it;

(d) Has violated this chapter or failed to comply with a rule adopted by the director under this chapter;

- (e) Has failed to display the registration as provided in this chapter;
- (f) Has published or circulated a statement with the intent to deceive, misrepresent, or mislead the public; or
- (g) Has committed a fraud or fraudulent practice in the operation and conduct of a travel agency business, including, but not limited to, intentionally misleading advertising.

(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.

(3) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

Sec. 6. RCW 19.138.140 and 1996 c 180 s 7 are each amended to read as follows:

(1) A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than five business days that are received from a person or entity, for retail travel services offered by the seller of travel. This subsection does not apply to travel services sold by a seller of travel, when payments for the travel services are made through the airlines reporting corporation (~~either by cash or credit or debit card sale~~).

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

- (a) Partial or full payment for travel services to the entity directly providing the travel service;
- (b) Refunds as required by this chapter;
- (c) The amount of the sales commission;
- (d) Interest earned and credited to the trust account or other approved account;
- (e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or
- (f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services.

(3) The seller of travel may deposit noncustomer funds into the trust account as needed in an amount equal to a deficiency resulting from dishonored customer payments made by check, draft, credit card, debit card, or other negotiable instrument.

(4) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW 19.138.110. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

~~((4))~~ (5) 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))~~ (6) 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))~~ (7) The seller of travel need not maintain a trust account nor comply with the trust account provisions of this section if the seller of travel:

(a)(i) Files and maintains a surety bond approved by the director in an amount of not less than ten thousand nor more than fifty thousand dollars, as determined by rule by the director based on the gross income of business conducted by the seller of travel during the prior year. The bond shall be executed by the applicant as obligor by a surety company authorized to transact business in this state naming the state of Washington as obligee for the benefit of any person or persons who have suffered monetary loss by reason of the seller of travel's violation of this chapter or a rule adopted under this chapter. The bond shall be conditioned that the seller of travel will conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse any person or persons who suffer monetary loss by reason of a violation of this chapter or a rule adopted under this chapter.

(ii) The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of the surety's intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director.

(iii) The applicant may obtain the bond directly from the surety or through other bonding arrangement as approved by the director.

(iv) 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 is approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(v) Any person or persons who have suffered monetary loss by any act which constitutes a violation of this chapter or a rule adopted under this chapter may bring a civil action in court against the seller of travel and the surety upon such bond or approved alternate security of the seller of travel who committed the violation of this chapter or a rule adopted under this chapter or who employed the seller of travel who committed such violation. A civil action brought in court pursuant to the provisions of this section must be filed no later than one year following the later of the alleged violation of this chapter or a rule adopted under this chapter or completion of the travel by the customer; or

(b) Is a member in good standing in a professional association, such as the United States tour operators association or national tour association, that is approved by the director and that provides or requires a member to provide a minimum of one million dollars in errors and professional liability insurance and provides a surety bond or equivalent protection in an amount of at least two hundred fifty thousand dollars for its member companies.

(8) 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.

Sec. 7. RCW 19.138.170 and 1994 c 237 s 13 are each amended to read as follows:

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. When ten or more complaints have been received by either the department or the attorney general on a seller of travel within a period of ninety days, the department shall inspect and audit books and records of the seller of travel; and

(6) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 19, 1999.

Passed the Senate April 8, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 239

[Engrossed Substitute House Bill 2107]

PUGET SOUND SHRIMP FISHERY

AN ACT Relating to limiting fishing of shrimp; amending RCW 75.28.130; adding a new section to chapter 75.28 RCW; adding new sections to chapter 75.30 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 75.28 RCW to read as follows:

The legislature finds that it is in the public interest to convert the Puget Sound shrimp fishery from the status of an emerging fishery to that of a limited entry fishery. The purpose of this act is to initiate this conversion, recognizing that additional details associated with the shrimp fishery limited entry program will need to be developed. The legislature intends to complete the development of the laws associated with this limited entry fishery program during the next regular legislative session and will consider recommendations from the industry and the department during this program.

Sec. 2. RCW 75.28.130 and 1994 c 260 s 14 are each amended to read as follows:

(1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Burrowing shrimp	\$185	\$295	Yes	No
(b) Crab ring net- Non-Puget Sound	\$130	\$185	Yes	No
(c) Crab ring net- Puget Sound	\$130	\$185	Yes	No

(d) Dungeness crab-coastal (RCW 75.30.350)	\$295	\$520	Yes	Yes
(e) Dungeness crab-coastal, class B (RCW 75.30.350)	\$295	\$520	Yes	Yes
(f) Dungeness crab-Puget Sound (RCW 75.30.130)	\$130	\$185	Yes	Yes
(g) Emerging commercial fishery (RCW 75.30.220 and 75.28.740)	\$185	\$295	Determined by rule	Determined by rule
(h) Geoduck (RCW 75.30.280)	\$ 0	\$ 0	Yes	Yes
(i) Hardshell clam mechanical harvester (RCW 75.28.280)	\$530	\$985	Yes	No
(j) Oyster reserve (RCW 75.28.290)	\$130	\$185	No	No
(k) Razor clam	\$130	\$185	No	No
(l) Sea cucumber dive (RCW 75.30.250)	\$130	\$185	Yes	Yes
(m) Sea urchin dive (RCW 75.30.210)	\$130	\$185	Yes	Yes
(n) Shellfish dive	\$130	\$185	Yes	No
(o) Shellfish pot	\$130	\$185	Yes	No
(p) Shrimp pot- ((Hood Canal))	(\$225)	(\$575))	Yes	((No))
<u>Puget Sound</u> <u>(section 3 of this act)</u>	<u>\$185</u>	<u>\$295</u>		<u>Yes</u>
(q) Shrimp trawl- Non-Puget Sound	\$240	\$405	Yes	No
(r) Shrimp trawl- Puget Sound <u>(section 4 of this act)</u>	\$185	\$295	Yes	((No)) <u>Yes</u>
(s) Squid	\$185	\$295	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery.

NEW SECTION. **Sec. 3.** A new section is added to chapter 75.30 RCW to read as follows:

(1) The Puget Sound shrimp emerging fishery management regime is converted from an emerging fishery status to a limited entry fishery status effective January 1, 2000.

(2) Effective January 1, 2000, a person shall not fish for shrimp taken from Puget Sound for commercial purposes with shrimp pot gear except under the

provisions of a shrimp pot-Puget Sound fishery license issued under RCW 75.28.130.

(3) Effective January 1, 2000, a shrimp pot-Puget Sound fishery license shall only be issued to a natural person who held an emerging commercial fishery license and Puget Sound shrimp pot experimental fishery permit during 1999. Beginning January 1, 2001, a shrimp pot-Puget Sound fishery license shall only be issued to a natural person who held a shrimp pot-Puget Sound fishery license during the previous year.

(4) Shrimp pot-Puget Sound fishery licenses are nontransferable.

(5) The department, by rule, may set licensee participation requirements for Puget Sound shellfish pot shrimp harvest.

NEW SECTION. Sec. 4. A new section is added to chapter 75.30 RCW to read as follows:

(1) The Puget Sound shrimp emerging fishery management regime is converted from an emerging fishery status to a limited entry fishery status effective January 1, 2000.

(2) Effective January 1, 2000, a person shall not fish for shrimp taken from Puget Sound for commercial purposes with shrimp trawl gear except under the provisions of a shrimp trawl-Puget Sound fishery license issued under RCW 75.28.130.

(3) Effective January 1, 2000, a shrimp trawl-Puget Sound fishery license shall only be issued to a natural person who held an emerging commercial fishery license and Puget Sound shrimp trawl experimental fishery permit during 1999. Beginning January 1, 2001, a shrimp trawl-Puget Sound fishery license shall only be issued to a natural person who held a shrimp trawl-Puget Sound fishery license during the previous licensing year.

(4) The department, by rule, may set licensee participation requirements for Puget Sound shellfish trawl shrimp harvest.

(5) Shrimp trawl-Puget Sound fishery licenses are nontransferable.

NEW SECTION. Sec. 5. The department of fish and wildlife and the Puget Sound shrimp fishing industry shall work cooperatively to refine the limited entry management program for the Puget Sound shrimp fishery. The department shall make recommendations to the natural resources committee of the house of representatives and the natural resources committee of the senate by December 31, 1999, on the details of the limited entry program, including a plan for converting from nontransferable to transferable licenses.

Passed the House April 19, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 240

[House Bill 2200]

DIRECTOR OF LICENSING--POWERS

AN ACT Relating to the powers of the director of licensing; amending RCW 43.24.020, 43.24.086, 19.02.030, and 18.54.920; adding a new section to chapter 43.24 RCW; creating a new section, and repealing RCW 43.24.010, 43.24.024, 43.24.110, 46.01.050, 46.01.055, and 46.01.090.

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

Sec. 1. RCW 43.24.020 and 1994 c 92 s 496 are each amended to read as follows:

In addition to other powers and duties granted to the department, 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.

Sec. 2. RCW 43.24.086 and 1989 1st ex.s. c 9 s 315 are each amended to read as follows:

It shall be the policy of the state of Washington that the cost of each professional, occupational or business licensing program be fully borne by the members of that profession, occupation or business. The director of licensing shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations or businesses, except for health professions, administered by ~~((the business and professions administration in))~~ the department of licensing. In fixing said fees, the director shall set the fees for each such program at a sufficient level to defray the costs of administering that program. All such fees shall be fixed by rule adopted by the director in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

~~((For fees associated with the licensing or regulation of health professions administered by the department of health, see RCW 43.70.250.))~~

NEW SECTION. Sec. 3. The director of licensing shall be appointed by the governor with the consent of the senate and shall serve at the pleasure of the governor. The director shall receive a salary in an amount fixed by the governor in accordance with RCW 43.03.040.

NEW SECTION. Sec. 4. A new section is added to chapter 43.24 RCW to read as follows:

(1) The director of licensing shall supervise and administer the activities of the department of licensing and shall advise the governor and the legislature with respect to matters under the jurisdiction of the department.

(2) In addition to other powers and duties granted to the director, the director has the following powers and duties:

(a) Enter into contracts on behalf of the state to carry out the responsibilities of the department;

(b) Accept and expend gifts and grants, whether such grants be of federal or other funds;

(c) Appoint a deputy director and such assistant directors, special assistants, and administrators as may be needed to administer the department. These employees are exempt from the provisions of chapter 41.06 RCW;

(d) Adopt rules in accordance with chapter 34.05 RCW and perform all other functions necessary to carry out the responsibilities of the department;

(e) Delegate powers, duties, and functions as the director deems necessary for efficient administration, but the director is responsible for the official acts of the officers and employees of the department; and

(f) Perform other duties as are necessary and consistent with law.

(3) The director may establish advisory groups as may be necessary to carry out the responsibilities of the department.

(4) The internal affairs of the department shall be under the control of the director in order that the director may manage the department in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the director shall have complete charge and supervisory powers over the department. The director may create such administrative structures as the director deems appropriate, except as otherwise specified by law, and the director may employ such personnel as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law.

Sec. 5. RCW 19.02.030 and 1993 c 142 s 4 are each amended to read as follows:

(1) There is created within the department of licensing a business license center.

(2) The duties of the center shall include:

(a) Developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing master licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered master license renewal;

(d) Identifying types of licenses appropriate for inclusion in the master license system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the master license system.

(3) ~~((The department of licensing shall establish the position of assistant director of the business license center.~~

— (4)) The director of licensing may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter.

Sec. 6. RCW 18.54.920 and 1963 c 25 s 18 are each amended to read as follows:

The provisions of RCW 43.24.060(~~(-43.24.110)~~) and 43.24.120 are not applicable to the licensing and regulation of the practice of optometry.

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

(1) RCW 43.24.010 and 1979 c 158 s 94, 1965 c 100 s 1, & 1965 c 8 s 43.24.010;

(2) RCW 43.24.024 and 1994 c 92 s 497, 1979 c 158 s 96, & 1965 ex.s. c 170 s 42;

(3) RCW 43.24.110 and 1997 c 58 s 867 & 1986 c 259 s 149;

(4) RCW 46.01.050 and 1994 c 92 s 501, 1979 c 158 s 116, 1969 ex.s. c 281 s 34, & 1965 c 156 s 5;

(5) RCW 46.01.055 and 1979 c 158 s 117, 1969 ex.s. c 281 s 35, & 1967 c 32 s 117; and

(6) RCW 46.01.090 and 1990 c 250 s 15, 1979 c 158 s 119, & 1965 c 156 s 9.

Passed the House March 10, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 241

[House Bill 2207]

LEGISLATIVE COMMISSION MEMBERSHIP

AN ACT Relating to increasing legislative membership on commissions; and amending RCW 43.46.015, 43.105.032, and 90.71.030.

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

Sec. I. RCW 43.46.015 and 1985 c 317 s 2 are each amended to read as follows:

There is established a Washington state arts commission. The commission consists of nineteen members appointed by the governor and ~~((two))~~ four members of the legislature, one from each caucus in the senate and appointed by the president of the senate and one from each caucus in the house of representatives and appointed by the speaker of the house of representatives. ~~((The legislative members shall be from opposite major political parties.))~~ The governor shall appoint citizens representing the various disciplines within the visual, performing and literary arts, and other citizens active in the arts community. The governor shall consider nominations for membership from individuals actively involved in cultural, state or community organizations. The governor shall also consider geographical distribution of the membership in the appointment of new members.

Sec. 2. RCW 43.105.032 and 1996 c 137 s 10 are each amended to read as follows:

There is hereby created the Washington state information services board. The board shall be composed of ~~((thirteen))~~ fifteen members. Eight members shall be appointed by the governor, one of whom shall be a representative of higher education, one of whom shall be a representative of an agency under a state-wide elected official other than the governor, and two of whom shall be representatives of the private sector. One member shall represent the judicial branch and be appointed by the chief justice of the supreme court. One member shall be the superintendent of public instruction or shall be appointed by the superintendent of public instruction. ~~((One))~~ Two members shall represent the house of representatives and shall be selected by the speaker of the house of representatives with one representative chosen from each caucus of the house of representatives; ~~((one))~~ two members shall represent the senate and shall be appointed by the president of the senate with one representative chosen from each caucus of the senate. ~~((The representatives of the house of representatives and senate shall not be from the same political party.))~~ One member shall be the director who shall be a voting member of the board. These members shall constitute the membership of the board with full voting rights. Members of the board shall serve at the pleasure of the appointing authority. The board shall select a chairperson from among its members.

Vacancies shall be filled in the same manner that the original appointments were made.

A majority of the members of the board shall constitute a quorum for the transaction of business.

Members of the board shall be compensated for service on the board in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

Sec. 3. RCW 90.71.030 and 1996 c 138 s 4 are each amended to read as follows:

(1) There is established the Puget Sound council composed of ~~((nine))~~ eleven members. Seven members shall be appointed by the governor. In making these appointments, the governor shall include representation from business, the environmental community, agriculture, the shellfish industry, counties, cities, and the tribes. ~~((One))~~ Two members shall be ~~((a))~~ members of the senate selected by the president of the senate with one member selected from each caucus in the senate, and ~~((one))~~ two members shall be ~~((a))~~ members of the house of representatives selected by the speaker of the house of representatives with one member selected from each caucus in the house of representatives. The legislative members shall be nonvoting members of the council. Appointments to the council shall reflect geographical balance and the diversity of population within the Puget Sound basin. Members shall serve four-year terms. Of the initial members appointed to the council, two shall serve for two years, two shall serve for three

years, and two shall serve for four years. Thereafter members shall be appointed to four-year terms. Vacancies shall be filled by appointment in the same manner as the original appointment for the remainder of the unexpired term of the position being vacated. Nonlegislative members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed as provided in RCW 44.04.120.

(2) The council shall:

(a) Recommend to the action team projects and activities for inclusion in the biennial work plan;

(b) Recommend to the action team coordination of work plan activities with other relevant activities, including but not limited to, agencies' activities other than those funded through the plan, local plan initiatives, and governmental and nongovernmental watershed restoration and protection activities; and

(c) Recommend to the action team proposed amendments to the Puget Sound management plan.

(3) The chair of the action team shall convene the council at least four times per year and shall jointly convene the council and the action team at least two times per year.

Passed the House April 19, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 242

[Engrossed Substitute House Bill 2239]

STORM WATER CONTROL—SALMON HABITAT

AN ACT Relating to storm water control grant programs; amending RCW 90.78.005, 90.78.010, 90.78.020, and 75.50.165; and providing an expiration date.

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

Sec. 1. RCW 90.78.005 and 1996 c 285 s 2 are each amended to read as follows:

The legislature finds that the increasing population and continued development throughout the state have increased the need for storm water control. Storm water impacts have resulted in increased public health risks related to drinking water and agricultural and seafood products; increased disruption of economic activity, transportation facilities, and other public and private land and facilities due to the lack of adequate flood control measures; adverse affects on state fish populations and watershed hydrology; and contamination of sediments.

In addition, current storm water control and management efforts related to transportation projects lack necessary coordination on a watershed, regional, and state-wide basis; have inadequate funding; and fail to maximize use of available resources.

More stringent regulatory requirements have increased the costs that state and local governments must incur to deal with significant sources of pollution such as storm water. The costs estimated to properly maintain and construct storm water facilities far exceed available revenues.

Therefore, it is the intent of the legislature to establish a program to develop a state-wide coordination mechanism for the funding of state, county, and city highway and roadway-related storm water management and control projects that will facilitate the completion of the state's most urgently needed storm water projects in the most cost-effective manner. Unexpended annual utility fee payments that are not collected by virtue of defaulting in preparing a plan must be used in the storm water grant program as defined in RCW 90.78.010 and 90.78.020.

Sec. 2. RCW 90.78.010 and 1996 c 285 s 3 are each amended to read as follows:

The department of transportation, in cooperation with the transportation improvement board, the department of ecology, cities, towns, counties, environmental organizations, business organizations, Indian tribes, and port districts, shall develop a storm water management funding and implementation program to address state, county, and city highway and roadway-related storm water control problems. As part of the program, the department may provide grants and may rate and rank local transportation improvement projects to facilitate the construction of the highest priority stand-alone state and local storm water management retrofit projects based on cost-effectiveness and contribution toward improved water quality, mitigating the impacts of altered stream hydrology, improved salmonid habitat, and reduced flooding in a watershed.

The program shall address, but is not limited to, the following objectives: (1) Greater state-wide coordination of the construction of storm water treatment facilities; (2) encouraging multijurisdictional projects; (3) developing priorities and approaches for implementing activities within watersheds; (4) methods to enhance, preserve, and restore salmonid habitat; ~~(5)~~ (6) identification and prioritization of storm water retrofit programs; ~~((5))~~ ~~(6)~~ (6) evaluating methods to determine cost benefits of proposed projects; ~~((6))~~ ~~(7)~~ (7) identifying ways to facilitate the sharing of technical resources; ~~((7))~~ ~~(8)~~ (8) developing methods for monitoring and evaluating activities carried out under the program; and ~~((8))~~ ~~(9)~~ (9) identifying potential funding sources for continuation of the program.

Sec. 3. RCW 90.78.020 and 1996 c 285 s 4 are each amended to read as follows:

The department of transportation may provide grants and may rate and rank local transportation improvement projects to implement state, county, and city highway and roadway-related storm water control measures. Cities, towns, counties, port districts, Indian tribes, and the department of transportation are eligible to receive grants, on a matching basis. The transportation improvement board may administer all grant programs specifically designed to assist cities,

counties, and local governments with storm water mitigation associated with transportation projects. A committee consisting of two representatives each from the department of transportation, with one as chair, the department of ecology, cities, and counties, and one representative each from the transportation improvement board, the department of fish and wildlife, an environmental organization, and a business organization, shall oversee the grant program. The committee may add representatives of other agencies, organizations, or interest groups to serve as members of the committee or in an advisory capacity. In developing project criteria, the committee shall identify the most urgent state, county, and city highway and roadway-related storm water management and control problems; develop methods for applying priorities across watersheds; give added weight to projects based on local contribution, multijurisdictional involvement, and whether the project is a priority for a local storm water utility; and determine the benefits of, and, if appropriate, provide incentives for off-site placement of storm water facilities and out-of-kind mitigation for storm water impacts.

Sec. 4. RCW 75.50.165 and 1998 c 249 s 16 are each amended to read as follows:

(1) ~~The department of transportation ((is authorized to)) and the department of fish and wildlife may administer ((and)) and coordinate all state grant programs specifically designed~~ to assist state agencies, local governments, private landowners, tribes, organizations, and volunteer groups in identifying and removing impediments to ~~((anadromous))~~ salmonid fish passage. ~~((The)) The transportation improvement board may administer all grant programs specifically designed to assist cities, counties, and local governments with fish passage barrier corrections associated with transportation projects. All grant programs ((shall)) must be administered and be consistent with the following:~~

(a) ~~((Eligible projects include))~~ Salmonid-related corrective projects, inventory, assessment, and prioritization efforts;

(b) Salmonid projects ~~((shall be))~~ subject to a competitive application process; and

(c) A minimum dollar match rate that is consistent with the funding authority's criteria. If no funding match is specified, a match amount of at least twenty-five percent per project is required. For local, private, and volunteer projects, in-kind contributions may be counted toward the match requirement.

(2) Priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. Priority shall also be given to project applications that are coordinated with other efforts within a watershed~~((+))~~.

~~((and))~~ (3) Except for projects administered by the transportation improvement board, all projects shall be reviewed and approved by the fish passage barrier removal task force~~((+and~~

~~— (e) A match of at least twenty-five percent per project shall be required. For local, private, and volunteer projects, in-kind contributions may be counted toward the match requirement.~~

~~— (2) The department of transportation shall proceed expeditiously in implementing the grant program during the 1998 summer construction season)) or an alternative oversight committee designated by the state legislature.~~

(4) Other agencies that administer natural resource based grant programs that may include fish passage barrier removal projects shall use fish passage selection criteria that are consistent with this section.

(5) The departments of transportation and fish and wildlife shall establish a centralized data base directory of all fish passage barrier information. The data base directory must include, but is not limited to, existing fish passage inventories, fish passage projects, grant program applications, and other data bases. These data must be used to coordinate and assist in habitat recovery and project mitigation projects.

NEW SECTION. Sec. 5. Sections 1 through 3 of this act expire July 1, 2003.

Passed the House April 19, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 243

[Senate Bill 5020]

FISHING AND HUNTING LICENSES—FEES

AN ACT Relating to recreational licenses; amending RCW 77.32.050 and 75.25.092; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that recreational license dealers are private businesses that provide the service of license sales in every part of the state. The dealers who sell recreational fishing and hunting licenses for the department of fish and wildlife perform a valuable public service function for those members of the public who purchase licenses as well as a revenue generating function for the department. The modernized fishing and hunting license format will require additional investments by license dealers in employee training and public education.

Sec. 2. RCW 77.32.050 and 1998 c 191 s 10 are each amended to read as follows:

All recreational licenses, permits, tags, and stamps required by ~~((this chapter))~~ Titles 75 and 77 RCW and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The commission shall adopt rules for the issuance of recreational licenses, permits, tags, stamps, and raffle tickets, and for the collection, payment, and handling of license fees, terms and conditions

to govern dealers, and dealers' fees. A transaction fee on recreational licenses may be set by the commission and collected from licensees. The department may authorize all or part of such fee to be paid directly to a contractor providing automated licensing system services. Fees retained by dealers shall be uniform throughout the state. The department shall authorize dealers to collect and retain dealer fees of at least two dollars for purchase of a standard hunting or fishing recreational license document, except that the commission may set a lower dealer fee for issuance of tags or when a licensee buys a license that involves a stamp or display card format rather than a standard department licensing document form.

Sec. 3. RCW 75.25.092 and 1998 c 191 s 2 are each amended to read as follows:

(1) A personal use shellfish and seaweed license is required for all persons other than residents or nonresidents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish for personal use from state waters or offshore waters including national park beaches.

(2) The fees for annual personal use shellfish and seaweed licenses are:

- (a) For a resident fifteen years of age or older, seven dollars;
- (b) For a nonresident fifteen years of age or older, twenty dollars; and
- (c) For a senior, five dollars.

(3) The license fee for a two-day personal use shellfish and seaweed license is six dollars for residents or nonresidents fifteen years of age or older.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate April 20, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 244

[Substitute Senate Bill 5029]

PUBLIC EMPLOYEES' RETIREMENT SYSTEM—MEMBERSHIP

AN ACT Relating to membership in the public employees' retirement system; amending RCW 41.40.023; and adding new sections to chapter 41.40 RCW.

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

Sec. I. RCW 41.40.023 and 1997 c 254 s 11 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 except as follows: ((PROVIDED, HOWEVER,))

(a) 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~~));

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits~~((+ AND PROVIDED FURTHER, That))~~;

(c) 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: ~~((+))~~ (i) Membership in the plan created under chapter 2.14 RCW; or ~~((+))~~ (ii) 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;

(d) Except as provided in section 2 of this act, on or after the effective date of this act, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to the effective date of this act, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(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) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(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 RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, 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 RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan.

NEW SECTION. Sec. 2. A new section is added to chapter 41.40 RCW under the subchapter heading: "Provisions applicable to Plan 1 and Plan 2" to read as follows:

(1) Employers that are organized pursuant to chapter 36.100, 36.102, or 81.112 RCW, who have become retirement system employers since 1993, and who have previously excluded some of their employees from retirement system membership pursuant to the limitation in RCW 41.40.023(4), shall have the option until December 31, 1999, to terminate their status as a retirement system employer with regard to persons employed after the date of their election.

(2) If a government unit terminates its status as an employer pursuant to this section its employees as of the date of the election who are members shall be eligible to continue their membership in the retirement system, if otherwise eligible under this chapter, for the duration of their continuous employment with that employer.

(3) If a government unit subject to this section does not elect to terminate its status as a retirement system employer it may either: (a) continue to exclude from membership those employees who were excluded pursuant to the limitation in RCW 41.40.023(4) prior to the effective date of this act; or include such employees in the retirement system, if otherwise eligible under this chapter, for service rendered on or after the effective date of this act and after the employer's election.

NEW SECTION. Sec. 3. A new section is added to chapter 41.40 RCW under the subchapter heading "Provisions applicable to Plan 1 and Plan 2" to read as follows:

(1) When a unit of government has become a retirement system employer, all of its employees must be included in the plan membership, if otherwise eligible under this chapter, unless the employee is exempted from membership or qualifies for optional membership pursuant to RCW 41.40.023 or other provision of this chapter.

(2) A unit of government which has become a retirement system employer may not withdraw from the retirement system.

Passed the Senate March 16, 1999.
Passed the House April 16, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 245

[Engrossed Senate Bill 5036]

SUPERIOR COURT JUDGES—ADDITIONAL POSITIONS

AN ACT Relating to superior court judges; amending RCW 2.08.065; and creating a new section.

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

Sec. 1. RCW 2.08.065 and 1996 c 208 s 5 are each amended to read as follows:

There shall be in the county of Grant, (~~two~~) three judges of the superior court; in the county of Okanogan, (~~one~~) two judges of the superior court; in the county of Mason, two judges of the superior court; in the county of Thurston, eight judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Ferry, Pend Oreille, and Stevens jointly, two judges of the superior court; and in the counties of San Juan and Island jointly, two judges of the superior court.

NEW SECTION. Sec. 2. (1) The additional judicial position for Grant county created by section 1 of this act is effective only if Grant county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by state law or the state Constitution.

(2) The additional judicial position for Okanogan county created by section 1 of this act is effective only if Okanogan county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the existing and additional judicial positions as provided by state law or the state Constitution.

Passed the Senate April 20, 1999.
Passed the House April 8, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 246

[Senate Bill 5095]

PUBLIC CORPORATIONS, COMMISSIONS, AND AUTHORITIES—REGULATION

AN ACT Relating to public corporations, commissions, and authorities; and adding a new chapter to 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:

A public corporation, commission, or authority created under this chapter, and officers and multi-member governing body thereof, are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter 42.17 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17.130, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW.

Passed the Senate April 20, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 247

[Senate Bill 5125]

PESTICIDE REGISTRATION COMMISSION

AN ACT Relating to the duties of the commission on pesticide registration; and amending RCW 15.92.090, 15.92.095, and 15.92.100.

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

Sec. 1. RCW 15.92.090 and 1995 c 390 s 1 are each amended to read as follows:

(1) A commission on pesticide registration is established. The commission shall be composed of twelve voting members appointed by the governor as follows:

(a) Eight members from the following segments of the state's agricultural industry as nominated by a state-wide private agricultural association or agricultural commodity commission formed under Title 15 RCW: (i) The tree fruit industry; (ii) hop growers; (iii) potato growers; (iv) wheat growers; (v) vegetable and seed growers; (vi) berry growers; (vii) wine grape growers; and (viii) the nursery and landscape industry. Although members are appointed from various segments of the agriculture industry, they are appointed to represent and advance the interests of the industry as a whole.

(b) One member from each of the following: (i) Forest protection industry; (ii) food processors; (iii) agricultural chemical industry; and (iv) professional pesticide applicators. One member shall be appointed for each such segment of the industry and shall be nominated by a state-wide, private association of that segment

of the industry. The representative of the agricultural chemical industry shall be involved in the manufacture of agricultural crop protection products.

The following shall be ex officio, nonvoting members of the commission: The coordinator of the interregional project number four at Washington State University; the director of the department of ecology or the director's designee; the director of the department of agriculture or the director's designee; the director of the department of labor and industries or the director's designee; and the secretary of the department of health or the secretary's designee.

(2) Each voting member of the commission shall serve a term of three years. However, the first appointments in the first year shall be made by the governor for one, two, and three-year terms so that, in subsequent years, approximately one-third of the voting members shall be appointed each year. The governor shall assign the initial one, two, and three-year terms to members by lot. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission serve without compensation from the state other than such travel expenses.

(3) Nominations for the initial appointments to the commission under subsection (1) of this section shall be submitted by September 1, 1995. The governor shall make initial appointments to the commission by October 15, 1995.

(4) The commission shall elect a chair from among its voting members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the ~~((voting members))~~ quorum.

Sec. 2. RCW 15.92.095 and 1995 c 390 s 2 are each amended to read as follows:

(1) ~~((The following apply))~~ This subsection applies to the use of ((state moneys appropriated to Washington State University specifically and expressly for studies or activities regarding the registration of pesticides)) state appropriations made to or legislatively intended for the commission on pesticide registration and to any other moneys appropriated by the state and received by the commission on pesticide registration:

(a) The moneys may not be expended without the express approval of the commission on pesticide registration;

(b) The moneys may be used for: (i) Evaluations, studies, or investigations approved by the commission on pesticide registration regarding the registration or reregistration of pesticides for minor crops or minor uses or regarding the

availability of pesticides for emergency uses. These evaluations, studies, or investigations may be conducted by the food and environmental quality laboratory or may be secured by the commission from other qualified laboratories, researchers, or contractors by contract, which contracts may include, but are not limited to, those purchasing the use of proprietary information; (ii) evaluations, studies, or investigations approved by the commission regarding research, implementation, and demonstration of any aspect of integrated pest management and pesticide resistance management programs; (iii) the tracking system described in RCW 15.92.060; and ~~((iii))~~ (iv) the support of the commission on pesticide registration and its activities; and

(c) Not less than twenty-five percent of such moneys shall be dedicated to studies or investigations concerning the registration or use of pesticides for crops that are not among the top twenty agricultural commodities in production value produced in the state, as determined annually by the Washington agricultural statistics service.

(2) The commission on pesticide registration shall establish priorities to guide it in approving the use of moneys for evaluations, studies, and investigations under this section. Each biennium, the commission shall prepare a contingency plan for providing funding for laboratory studies or investigations that are necessary to pesticide registrations or related processes that will address emergency conditions for agricultural crops that are not generally predicted at the beginning of the biennium.

Sec. 3. RCW 15.92.100 and 1995 c 390 s 3 are each amended to read as follows:

The commission on pesticide registration shall:

(1) Provide guidance to the food and environmental quality laboratory established in RCW 15.92.050 regarding the laboratory's studies, investigations, and evaluations concerning the registration of pesticides for use in this state for minor crops and minor uses and concerning the availability of pesticides for emergency uses;

(2) Encourage agricultural organizations to assist in providing funding, in-kind services, or materials for laboratory studies and investigations concerning the registration of pesticides and research, implementation, and demonstration of any aspect of integrated pest management and pesticide resistance management programs for minor crops and minor uses that would benefit the organizations;

(3) Provide guidance to the laboratory regarding a program for: Tracking the availability of effective pesticides for minor crops, minor uses, and emergency uses; providing this information to organizations of agricultural producers; and maintaining close contact between the laboratory, the department of agriculture, and organizations of agricultural producers regarding the need for research to support the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses;

(4) Ensure that the activities of the commission and the laboratory are coordinated with the activities of other laboratories in the Pacific Northwest, the United States department of agriculture, and the United States environmental protection agency to maximize the effectiveness of regional efforts to assist in the registration of pesticides for minor crops and minor uses and in providing for the availability of pesticides for emergency uses for the region and the state; and

(5) Ensure that prior to approving any residue study that there is written confirmation of registrant support and willingness or ability to add the given minor crop to its label including any restrictions or guidelines the registrant intends to impose.

Passed the Senate April 20, 1999.

Passed the House April 7, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 248

[Substitute Senate Bill 5154]

ELECTRIC UTILITIES—LIABILITY FOR REMOVING VEGETATION

AN ACT Relating to limiting the liability of electric utilities for efforts undertaken to protect their facilities from damage that might be caused by vegetation; amending RCW 4.24.630; and adding a new section to chapter 64.12 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 64.12 RCW to read as follows:

(1) An electric utility is immune from liability under RCW 64.12.030, 64.12.040, and 4.24.630 and any claims for general or special damages, including claims of emotional distress, for cutting or removing vegetation located on or originating from land or property adjacent to electric facilities that:

(a) Has come in contact with or caused damage to electric facilities;

(b) Poses an imminent hazard to the general public health, safety, or welfare and the electric utility provides notice and makes a reasonable effort to obtain an agreement from the resident or property owner present on the property to trim or remove such hazard. For purposes of this subsection (1)(b), notice may be provided by posting a notice or flier in a conspicuous location on the affected property that gives a good faith estimate of the time frame in which the electric utility's trimming or removal work must occur, specifies how the electric utility may be contacted, and explains the responsibility of the resident or property owner to respond pursuant to the requirements of the notice. An electric utility may act without agreement if the resident or property owner fails to respond pursuant to the requirements of the notice. No notice or agreement is necessary if the electric utility's action is necessary to protect life, property, or restore electric service; or

(c) Poses a potential threat to damage electric facilities and the electric utility attempts written notice by mail to the last known address of record indicating the

intent to act or remove vegetation and secures agreement from the affected property owner of record for the cutting, removing, and disposition of the vegetation. Such notice shall include a brief statement of the need and nature of the work intended that will impact the owner's property or vegetation, a good faith estimate of the time frame in which such work will occur, and how the utility can be contacted regarding the cutting or removal of vegetation. If the affected property owner fails to respond to a notice from the electric utility within two weeks of the date the electric utility provided notice, the electric utility may secure agreement from a resident of the affected property for the cutting, removing, and disposition of vegetation.

(2)(a) A hazard to the general public health, safety, or welfare is deemed to exist when:

(i) Vegetation has encroached upon electric facilities by overhanging or growing in such close proximity to overhead electric facilities that it constitutes an electrical hazard under applicable electrical construction codes or state and federal health and safety regulations governing persons who are employed or retained by, or on behalf of, an electric utility to construct, maintain, inspect, and repair electric facilities or to trim or remove vegetation; or

(ii) Vegetation is visibly diseased, dead, or dying and has been determined by a qualified forester or certified arborist employed or retained by, or on behalf of, an electric utility to be of such proximity to electric facilities that trimming or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities.

(b) The factors to be considered in determining the extent of trimming required to remove a hazard to the general public health, safety, or welfare may include normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures.

(3) A potential threat to damage electric facilities exists when vegetation is of such size, condition, and proximity to electric facilities that it can be reasonably expected to cause damage to electric facilities and, based upon this standard, the vegetation has been determined to pose a potential threat by a qualified forester or certified arborist employed or retained by or on behalf of an electric utility.

(4) For the purposes of this section:

(a) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, cross-arms, receivers, transmitters, transformers, instruments, machines, appliances, instrumentalities, and all devices and apparatus used, operated, owned, or controlled by an electric utility, for the purposes of manufacturing, transforming, transmitting, distributing, selling, or furnishing electricity.

(b) "Electric utility" means an electrical company, as defined under RCW 80.04.010, a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter

87.03 RCW, a cooperative formed under chapter 23.86 RCW, and a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity in the state.

(c) "Vegetation" means trees, timber, or shrubs.

Sec. 2. RCW 4.24.630 and 1994 c 280 s 1 are each amended to read as follows:

(1) Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 79.01.756, 79.01.760, ~~((or))~~ 79.40.070, or where there is immunity from liability under section 1 of this act.

NEW SECTION. **Sec. 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 20, 1999.

Passed the House April 14, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 249

[Substitute Senate Bill 5179]

PARKS AND RECREATION COMMISSION

AN ACT Relating to the authority of the parks and recreation commission; amending RCW 43.51.020, 43.51.030, 43.51.040, 43.51.045, 43.51.046, 43.51.055, 43.51.061, 43.51.060, 43.51.052, 46.61.587, 7.84.010, 7.84.020, 43.51.210, 43.220.160, 79.72.020, 79.72.030, 79.72.040, 79.72.050, 79.72.070, 43.51.070, 43.51.110, 43.51.140, 43.51.220, 43.51.237, 43.51.270, 43.51.948, 43.51.720, 43.51.730, 43.51.750, 43.51.510, 43.51.540, 43.51.432, 88.12.015, 88.12.165, 88.12.175, 88.12.195, 88.12.205, 88.12.295, 88.12.305, 88.12.365, and 88.12.385; reenacting and amending RCW 43.51.290; adding a new title to the Revised Code of Washington to be codified as Title 79A RCW; recodifying RCW 43.51.020, 43.51.030, 43.51.040, 43.51.045, 43.51.046, 43.51.048, 43.51.050, 43.51.052, 43.51.055, 43.51.060, 43.51.061, 43.51.062, 43.51.063, 43.51.065, 43.51.070, 43.51.090, 43.51.100, 43.51.110, 43.51.112, 43.51.1121, 43.51.113, 43.51.114, 43.51.120, 43.51.130, 43.51.140, 43.51.150, 43.51.160, 43.51.170, 43.51.180, 43.51.200, 43.51.210, 43.51.215, 43.51.220, 43.51.235, 43.51.237, 43.51.240, 43.51.250, 43.51.270, 43.51.275, 43.51.285, 43.51.290, 43.51.300, 43.51.310, 43.51.320, 43.51.321, 43.51.330, 43.51.340, 43.51.350, 43.51.360, 43.51.365, 43.51.370, 43.51.375,

43.51.380, 43.51.385, 43.51.395, 43.51.400, 43.51.405, 43.51.407, 43.51.409, 43.51.411, 43.51.415, 43.51.417, 43.51.419, 43.51.420, 43.51.430, 43.51.432, 43.51.434, 43.51.436, 43.51.438, 43.51.440, 43.51.442, 43.51.444, 43.51.446, 43.51.448, 43.51.450, 43.51.452, 43.51.454, 43.51.456, 43.51.500, 43.51.510, 43.51.530, 43.51.540, 43.51.550, 43.51.560, 43.51.570, 43.51.580, 43.51.590, 43.51.650, 43.51.655, 43.51.660, 43.51.665, 43.51.670, 43.51.675, 43.51.685, 43.51.695, 43.51.700, 43.51.705, 43.51.710, 43.51.715, 43.51.720, 43.51.725, 43.51.730, 43.51.735, 43.51.740, 43.51.745, 43.51.750, 43.51.755, 43.51.760, 43.51.765, 43.51.900, 43.51.910, 43.51.920, 43.51.930, 43.51.940, 43.51.942, 43.51.943, 43.51.944, 43.51.945, 43.51.946, 43.51.947, 43.51.948, 43.51.949, 43.51.950, 43.51.951, 43.51.952, 43.51.953, 43.51.954, 43.51.955, 43.51.956, 43.98.010, 43.98.020, 43.98.030, 43.98.040, 43.98.050, 43.98.060, 43.98.070, 43.98.080, 43.98.090, 43.98A.005, 43.98A.010, 43.98A.020, 43.98A.030, 43.98A.040, 43.98A.050, 43.98A.060, 43.98A.070, 43.98A.080, 43.98A.090, 43.98A.100, 43.98A.900, 43.98B.005, 43.98B.010, 43.98B.020, 43.98B.030, 43.98B.900, 43.98B.910, 43.98B.920, 43.99.010, 43.99.020, 43.99.025, 43.99.030, 43.99.040, 43.99.050, 43.99.060, 43.99.070, 43.99.080, 43.99.095, 43.99.100, 43.99.110, 43.99.120, 43.99.124, 43.99.126, 43.99.130, 43.99.135, 43.99.142, 43.99.146, 43.99.150, 43.99.170, 43.99.800, 43.99.810, 43.99.820, 43.99.830, 43.99.900, 43.99.910, 67.18.005, 67.18.010, 67.18.020, 67.18.030, 67.18.040, 67.18.050, 67.18.900, 67.32.010, 67.32.020, 67.32.030, 67.32.040, 67.32.050, 67.32.060, 67.32.070, 67.32.080, 67.32.090, 67.32.100, 67.32.110, 67.32.130, 67.32.140, 70.88.010, 70.88.020, 70.88.030, 70.88.040, 70.88.050, 70.88.060, 70.88.070, 70.88.080, 70.88.090, 70.88.100, 70.117.010, 70.117.015, 70.117.020, 70.117.025, 70.117.030, 70.117.040, 77.12.720, 77.12.730, 77.12.740, 79.08.102, 79.08.104, 79.08.106, 79.08.1062, 79.08.1064, 79.08.1066, 79.08.1069, 79.08.1072, 79.08.1074, 79.08.1078, 79.08.109, 79.72.010, 79.72.020, 79.72.030, 79.72.040, 79.72.050, 79.72.060, 79.72.070, 79.72.080, 79.72.090, 79.72.100, 79.72.900, 88.12.010, 88.12.015, 88.12.020, 88.12.025, 88.12.029, 88.12.032, 88.12.033, 88.12.035, 88.12.045, 88.12.055, 88.12.065, 88.12.075, 88.12.085, 88.12.095, 88.12.105, 88.12.115, 88.12.125, 88.12.135, 88.12.145, 88.12.155, 88.12.165, 88.12.175, 88.12.185, 88.12.195, 88.12.205, 88.12.215, 88.12.218, 88.12.222, 88.12.225, 88.12.227, 88.12.230, 88.12.232, 88.12.235, 88.12.245, 88.12.250, 88.12.255, 88.12.260, 88.12.265, 88.12.275, 88.12.276, 88.12.278, 88.12.279, 88.12.285, 88.12.295, 88.12.305, 88.12.315, 88.12.325, 88.12.335, 88.12.345, 88.12.355, 88.12.365, 88.12.375, 88.12.385, 88.12.500, 88.12.505, 88.27.010, 88.27.020, 88.27.030, 88.27.040, 88.27.050, 88.27.900, and 90.56.090; repealing RCW 43.51.010, 79.08.108, 43.51.047, 43.51.080, 43.51.545, 43.51.260, 43.51.355, 43.51.230, and 88.12.395; and prescribing penalties.

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

PART I DEFINITIONS

NEW SECTION. Sec. 101. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

- (1) "Commission" means the state parks and recreation commission.
- (2) "Chair" means the member of the commission elected pursuant to RCW 43.51.030 (as recodified by this act).
- (3) "Director" and "director of the state parks and recreation commission" mean the director of parks and recreation or the director's designee.
- (4) "Recreation" means those activities of a voluntary and leisure time nature that aid in promoting entertainment, pleasure, play, relaxation, or instruction.
- (5) "Natural forest" means a forest that faithfully represents, or is meant to become representative of, its unaltered state.

PART II GENERAL POLICIES

Sec. 201. RCW 43.51.020 and 1984 c 287 s 82 are each amended to read as follows:

There is hereby created a "state parks and recreation commission" consisting of seven ~~((electors))~~ citizens of the state. The members of the commission shall be appointed by the governor by and with the advice and consent of the senate and shall serve for a term of six years, expiring on December 31st of even-numbered years, and until their successors are appointed. In case of a vacancy, the governor shall fill the vacancy for the unexpired term of the commissioner whose office has become vacant.

~~((The commissioners incumbent as of August 11, 1969, shall serve as follows: Those commissioners whose terms expire December 31, 1970, shall serve until December 31, 1970; the elector appointed to succeed to the office, the term for which expired December 31, 1968, shall serve until December 31, 1974; the terms of three of the four remaining commissioners shall each expire on December 31, 1972.~~

~~—To assure that no more than the terms of three members will expire simultaneously on December 31st in any one even-numbered year, the term of not more than one commissioner incumbent on August 11, 1969, as designated by the governor, who was either appointed or reappointed to serve until December 31, 1972, shall be increased by the governor by two years, and said term shall expire December 31, 1974.))~~

In making the appointments to the commission, the governor shall choose ~~((electors))~~ citizens who understand park and recreation needs and interests. No person shall serve if he or she holds any elective or full-time appointive state, county, or municipal office. Members of the commission shall be compensated in accordance with RCW 43.03.240 and in addition shall be allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060.

Payment of expenses pertaining to the operation of the commission shall be made upon vouchers certified to by such persons as shall be designated by the commission.

Sec. 202. RCW 43.51.030 and 1965 c 8 s 43.51.030 are each amended to read as follows:

The commission shall elect one of its members as ~~((chairman))~~ chair. The commission may be convened at such times as the ~~((chairman))~~ chair deems necessary, and a majority shall constitute a quorum for the transaction of business.

PART III DUTIES AND POWERS OF THE COMMISSION

NEW SECTION. **Sec. 301.** In addition to whatever other duties may exist in law or be imposed in the future, it is the duty of the commission to:

- (1) Implement integrated pest management practices and regulate pests as required by RCW 17.15.020;
- (2) Take steps necessary to control spartina and purple loosestrife as required by RCW 17.26.020;

- (3) Participate in the implementation of chapter 19.02 RCW;
- (4) Coordinate planning and provide staffing and administrative assistance to the Lewis and Clark trail committee as required by RCW 27.34.340;
- (5) Administer those portions of chapter 46.10 RCW not dealing with registration and licensing of snowmobiles as required by RCW 46.10.210;
- (6) Consult and participate in the scenic and recreational highway system as required by chapter 47.39 RCW; and
- (7) Develop, prepare, and distribute information relating to marine oil recycling tanks and sewage holding tank pumping stations, in cooperation with other departments, as required by chapter 88.02 RCW.

The commission has the power reasonably necessary to carry out these duties.

Sec. 302. RCW 43.51.040 and 1989 c 175 s 106 are each amended to read as follows:

The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt policies, (~~promulgate~~) and adopt, issue, and enforce rules pertaining to the use, care, and administration of state parks and parkways. The commission shall cause a copy of the rules to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules as shall be adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than forty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED FURTHER, That television station leases shall be subject to the provisions of RCW 43.51.063 (as recodified by this act), only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes

as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways. Option agreements executed under authority of this ~~((subdivision))~~ subsection shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions, or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

Sec. 303. RCW 43.51.045 and 1984 c 82 s 1 are each amended to read as follows:

(1) The commission shall:

(a) Manage timber and land under its jurisdiction to maintain and enhance aesthetic and recreational values;

(b) Apply modern conservation practices to maintain and enhance aesthetic, recreational, and ecological resources; and

(c) Designate and preserve certain forest areas throughout the state as natural forests or natural areas for interpretation, study, and preservation purposes.

(2) Trees may be removed from state parks:

(a) When hazardous to persons, property, or facilities;

(b) As part of a park maintenance or development project, or conservation practice;

(c) As part of a road or utility easement; or

(d) When damaged by a catastrophic forest event.

(3) Tree removal under subsection (2) of this section shall be done by commission personnel, unless the personnel lack necessary expertise. Except in emergencies and when feasible, significant trees shall be removed only after they have been marked or appraised by a professional forester. The removal of significant trees from a natural forest may take place only after a public hearing has been held, except in emergencies.

(4) When feasible, felled timber shall be left on the ground for natural purposes or used for park purposes including, but not limited to, building projects,

trail mulching, and firewood. In natural forest areas, first consideration shall be given to leaving timber on the ground for natural purposes.

(5) The commission may issue permits to individuals under RCW 4.24.210 and 43.51.065 (as recodified by this act) for the removal of wood debris from state parks for personal firewood use.

(6) Only timber that qualifies for cutting or removal under subsection (2) of this section may be sold. Timber shall be sold only when surplus to the needs of the park.

(7) Net revenue derived from timber sales shall be deposited in the state parks renewal and stewardship account created in RCW 43.51.275 (as recodified by this act).

Sec. 304. RCW 43.51.046 and 1991 c 11 s 1 are each amended to read as follows:

(1) ~~((By July 1, 1992,)) The ((state parks and recreation))~~ commission shall provide waste reduction and recycling information in each state park campground and day-use area.

(2) ~~((By July 1, 1993,))~~ The commission shall provide recycling receptacles in the day-use and campground areas of at least ~~((fifteen))~~ forty state parks. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin. The commission shall endeavor to provide recycling receptacles in parks that are near urban centers or in heavily used parks.

(3) The commission shall provide daily maintenance of such receptacles from April through September of each year.

(4) ~~((Beginning July 1, 1993, the commission shall provide recycling receptacles in at least five additional state parks per biennium until the total number of state parks having recycling receptacles reaches forty.~~

~~—(5))~~ The commission is authorized to enter into agreements with any person, company, or nonprofit organization to provide for the collection and transport of recyclable materials and related activities under this section.

Sec. 305. RCW 43.51.055 and 1997 c 74 s 1 are each amended to read as follows:

(1) The commission shall grant to any person who meets the eligibility requirements specified in this section a senior citizen's pass which shall (a) entitle such person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission, and (b) entitle such person to free admission to any state park.

(2) The commission shall grant a senior citizen's pass to any person who applies for the same and who meets the following requirements:

(a) The person is at least sixty-two years of age; and

(b) The person is a domiciliary of the state of Washington and meets reasonable residency requirements prescribed by the commission; and

(c) The person and his or her spouse have a combined income which would qualify the person for a property tax exemption pursuant to RCW 84.36.381, as now law or hereafter amended. The financial eligibility requirements of this subparagraph (c) shall apply regardless of whether the applicant for a senior citizen's pass owns taxable property or has obtained or applied for such property tax exemption.

(3) Each senior citizen's pass granted pursuant to this section is valid so long as the senior citizen meets the requirements of subsection (2)(b) of this section. Notwithstanding, any senior citizen meeting the eligibility requirements of this section may make a voluntary donation for the upkeep and maintenance of state parks.

(4) A holder of a senior citizen's pass shall surrender the pass upon request of a commission employee when the employee has reason to believe the holder fails to meet the criteria in subsection (2)(a), (b), or (c) of this section. The holder shall have the pass returned upon providing proof to the satisfaction of the director of the parks and recreation commission that the holder does meet the eligibility criteria for obtaining the senior citizen's pass.

(5) Any resident of Washington who is disabled as defined by the social security administration and who receives social security benefits for that disability, or any other benefits for that disability from any other governmental or nongovernmental source, or who is entitled to benefits for permanent disability under RCW 71A.10.020(~~(2)~~) (3) due to unemployability full time at the minimum wage, or who is legally blind or profoundly deaf, or who has been issued a card, decal, or special license plate for a permanent disability under RCW 46.16.381 shall be entitled to receive, regardless of age and upon making application therefor, a disability pass at no cost to the holder. The pass shall (a) entitle such person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission, and (b) entitle such person to free admission to any state park.

(6) A card, decal, or special license plate issued for a permanent disability under RCW 46.16.381 may serve as a pass for the holder to entitle that person and members of the person's camping unit to a fifty percent reduction in the campsite rental fee prescribed by the commission, and to allow the holder free admission to state parks.

(7) Any resident of Washington who is a veteran and has a service-connected disability of at least thirty percent shall be entitled to receive a lifetime veteran's disability pass at no cost to the holder. The pass shall (a) entitle such person, and members of his or her camping unit, to free use of any campsite within any state park; (b) entitle such person to free admission to any state park; and (c) entitle such person to an exemption from any reservation fees.

(8) All passes issued pursuant to this section shall be valid at all parks any time during the year: PROVIDED, That the pass shall not be valid for admission to concessionaire operated facilities.

(9) This section shall not affect or otherwise impair the power of the commission to continue or discontinue any other programs it has adopted for senior citizens.

(10) The commission shall adopt such rules (~~and regulations~~) as it finds appropriate for the administration of this section. Among other things, such rules (~~and regulations~~) shall prescribe a definition of "camping unit" which will authorize a reasonable number of persons traveling with the person having a pass to stay at the campsite rented by such person, a minimum Washington residency requirement for applicants for a senior citizen's pass and an application form to be completed by applicants for a senior citizen's pass.

Sec. 306. RCW 43.51.061 and 1969 ex.s. c 31 s 2 are each amended to read as follows:

~~((Notwithstanding any other provisions of this chapter or of other laws))~~ No provision of law relating to the commission(~~(:)~~) shall prevent the commission (~~((may delegate))~~) from delegating to the director (~~(of parks and recreation))~~ such powers and duties of the commission as they may deem proper.

Sec. 307. RCW 43.51.060 and 1995 c 211 s 3 are each amended to read as follows:

The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;
- (3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;
- (4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;

(5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;

(6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper;

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed ten years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040(~~(, and upon his recommendation, a supervisor of recreation,))~~) and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose.

PART IV DUTIES OF THE DIRECTOR

NEW SECTION. **Sec. 401.** In addition to other duties the commission may from time to time impose, it is the duty of the director to:

(1) Ensure the control of weeds in parks to the extent required by RCW 17.04.160 and 17.10.205; and

(2) Participate in the operations of the environmental enhancement and job creation task force under chapter 43.21J RCW.

The director has the power reasonably necessary to carry out these duties.

Sec. 402. RCW 43.51.052 and 1997 c 137 s 2 are each amended to read as follows:

(1) The parks improvement account is hereby established in the state treasury.

(2) The (~~(parks and recreation))~~ commission shall deposit all moneys received from the sale of interpretive, recreational, and historical literature and materials in this account. Moneys in the account may be spent only for development, production, and distribution costs associated with literature and materials.

(3) Disbursements from the account shall be on the authority of the director (~~(of the parks and recreation commission)),~~ or the director's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW. No appropriation is required for disbursement of moneys to be used for support of further production of materials provided for in RCW 43.51.050(2) (as recodified by this act). The director may transfer a portion of the moneys in this account to

the state parks renewal and stewardship account and may expend moneys so transferred for any purpose provided for in RCW 43.51.275 (as recodified by this act).

PART V PROHIBITED ACTS AND PENALTIES

Sec. 501. RCW 46.61.587 and 1984 c 258 s 329 are each amended to read as follows:

Any violation of RCW 43.51.320 (as recodified by this act) or 46.61.585 or any rule ~~((promulgated))~~ adopted by the parks and recreation commission to enforce the provisions thereof ~~((shall be punished by a fine of not more than twenty-five dollars))~~ is a civil infraction as provided in chapter 7.84 RCW.

Sec. 502. RCW 7.84.010 and 1993 c 244 s 2 are each amended to read as follows:

The legislature declares that decriminalizing certain offenses contained in Titles 75, 76, 77, ~~((and))~~ 79, and 79A RCW and chapter ~~((s))~~ 43.30 ~~((, 43.51, and 88.12))~~ RCW and any rules adopted pursuant to those titles and chapters would promote the more efficient administration of those titles and chapters. The purpose of this chapter is to provide a just, uniform, and efficient procedure for adjudicating those violations which, in any of these titles and chapters or rules adopted under these chapters or titles, are declared not to be criminal offenses. The legislature respectfully requests the supreme court to prescribe any rules of procedure necessary to implement this chapter.

Sec. 503. RCW 7.84.020 and 1993 c 244 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title 75, 76, 77, ~~((or))~~ 79, or 79A RCW or chapter 43.30 ~~((, 43.51, or 88.12))~~ RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter.

PART VI PROCEDURES FOR DISPOSAL OF PARK LAND

Sec. 601. RCW 43.51.210 and 1998 c 42 s 1 are each amended to read as follows:

Whenever the ~~((state parks and recreation))~~ commission finds that any land under its control cannot advantageously be used for park purposes, it is authorized to dispose of such land by the method provided in this section or by the method provided in RCW 43.51.200 (as recodified by this act). If such lands are school or other grant lands, control thereof shall be relinquished by resolution of the commission to the proper state officials. If such lands were acquired under

restrictive conveyances by which the state may hold them only so long as they are used for park purposes, they may be returned to the donor or grantors by the commission. All other such lands may be either sold by the commission to the highest bidder or exchanged for other lands of equal value by the commission, and all conveyance documents shall be executed by the governor. All such exchanges shall be accompanied by a transfer fee, to be set by the commission and paid by the other party to the transfer; such fee shall be paid into the parkland acquisition account established under RCW 43.51.200 as recodified by this act). Sealed bids on all sales shall be solicited at least twenty days in advance of the sale date by an advertisement appearing at least ~~((in three))~~ once a week for two consecutive ~~((issues of))~~ weeks in a newspaper of general circulation in the county in which the land to be sold is located. If the commission feels that no bid received adequately reflects the fair value of the land to be sold, it may reject all bids, and may call for new bids. All proceeds derived from the sale of such park property shall be paid into the park land acquisition account. All land considered for exchange shall be evaluated by the commission to determine its adaptability to park usage. The equal value of all lands exchanged shall first be determined by the appraisals to the satisfaction of the commission(~~(-PROVIDED, That))~~). No sale or exchange of state park lands shall be made without the unanimous consent of the commission.

PART VII VOLUNTEERS

NEW SECTION. Sec. 701. The commission shall cooperate in implementing and operating the conservation corps as required by chapter 43.220 RCW.

Sec. 702. RCW 43.220.160 and 1983 1st ex. s. c 40 s 16 are each amended to read as follows:

(1) There is established a conservation corps within the state parks and recreation commission.

(2) Specific work project areas of the state parks and recreation conservation corps may include the following:

- (a) Restoration or development of park facilities;
- (b) Trail construction and maintenance;
- (c) Litter control;
- (d) Park and land rehabilitation;
- (e) Fire suppression;
- (f) Road repair; and
- (g) Other projects as the state parks and recreation commission may determine. If ~~((appropriation))~~ appropriate facilities are available, the state parks and recreation commission may authorize carrying out projects which involve overnight stays.

**PART VIII
SCENIC RIVER SYSTEM**

Sec. 801. RCW 79.72.020 and 1994 c 264 s 64 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"~~) "Commission" means the state parks and recreation commission.

(2) "Committee of participating agencies" or "committee" means a committee composed of the executive head, or the executive's designee, of each of the state departments of ecology, fish and wildlife, natural resources, and transportation, the state parks and recreation commission, the interagency committee for outdoor recreation, the Washington state association of counties, and the association of Washington cities. In addition, the governor shall appoint two public members of the committee. Public members of the committee shall be compensated in accordance with RCW 43.03.220 and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

When a specific river or river segment of the state's scenic river system is being considered by the committee, a representative of each participating local government associated with that river or river segment shall serve as a member of the committee.

(3) "Participating local government" means the legislative authority of any city or county, a portion of whose territorial jurisdiction is bounded by or includes a river or river segment of the state's scenic river system.

(4) "River" means a flowing body of water or a section, segment, or portion thereof.

(5) "River area" means a river and the land area in its immediate environs as established by the participating agencies not exceeding a width of one-quarter mile landward from the streamway on either side of the river.

(6) "Scenic easement" means the negotiated right to control the use of land, including the air space above the land, for the purpose of protecting the scenic view throughout the visual corridor.

(7) "Streamway" means that stream-dependent corridor of single or multiple, wet or dry, channel or channels within which the usual seasonal or stormwater run-off peaks are contained, and within which environment the flora, fauna, soil, and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(8) "System" means all the rivers and river areas in the state designated by the legislature for inclusion as scenic rivers but does not include tributaries of a designated river unless specifically included by the legislature. The inclusion of a river in the system does not mean that other rivers or tributaries in a drainage basin shall be required to be part of the management program developed for the

system unless the rivers and tributaries within the drainage designated for inclusion by the legislature.

(9) "Visual corridor" means that area which can be month by a person of normal vision walking either bank system. The visual corridor shall not exceed the river area.

Sec. 802. RCW 79.72.030 and 1977 ex.s. c 161 s 3 are each amended as follows:

(1) The ~~((department))~~ commission shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The ~~((department))~~ commission may adopt ~~((regulations))~~ rules identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be subject to review by the committee of participating agencies. Once such a policy has been approved by a majority vote of the committee members, it shall be adopted by the ~~((department))~~ commission in accordance with the provisions of chapter 34.05 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the committee of participating agencies by majority vote, and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The committee of participating agencies shall, by two-thirds majority vote, identify on a river by river basis any publicly owned or leased lands which could be included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The ~~((department))~~ commission shall exclude lands so identified from the provisions of any management policies implementing the provisions of this chapter.

(4) The committee of participating agencies, by majority vote, shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in RCW 79.72.080 (as recodified by this act), the committee shall make such determination, and those determinations authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the committee shall hold hearings in accord with chapter

34.05 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The ~~((department))~~ commission shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

(6) Meetings of the committee shall be called by the ~~((department))~~ commission or by written petition signed by five or more of the committee members. The ~~((chairman))~~ chair of the ~~((parks and recreation))~~ commission or the ~~((chairman's))~~ chair's designee shall serve as the ~~((chairman))~~ chair of any meetings of the committee held to implement the provisions of this chapter.

The committee shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may, through the ~~((department))~~ commission, submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the committee's judgment, make an area a worthy addition to the system.

Sec. 803. RCW 79.72.040 and 1989 c 175 s 169 are each amended to read as follows:

(1) The management program for the system shall be administered by the ~~((department))~~ commission. The ~~((department))~~ commission shall have the responsibility for coordinating the development of the program between affected state agencies and participating local governments, and shall develop and adopt rules, in accord with chapter 34.05 RCW, the Administrative Procedure Act, for each portion of the system, which shall implement the management policies. In developing rules for a specific river in the system, the ~~((department))~~ commission shall hold at least one public hearing in the general locale of the river under consideration. The hearing may constitute the hearing required by chapter 34.05 RCW. The ~~((department))~~ commission shall cause a brief summary of the proposed rules to be published twice in a newspaper of general circulation in the area that includes the river to be considered in the period of time between two and four weeks prior to the public hearing. In addition to the foregoing required publication, the ~~((department))~~ commission shall also provide notice of the hearings, rules, and decisions of the ~~((department))~~ commission to radio and television stations and major local newspapers in the areas that include the river to be considered.

(2) In addition to any other powers granted to carry out the intent of this chapter, the ~~((department))~~ commission is authorized, subject to approval by majority vote of the members of the committee, to: (a) Purchase, within the river area, real property in fee or any lesser right or interest in real property including, but not limited to scenic easements and future development rights, visual corridors, wildlife habitats, unique ecological areas, historical sites, camping and picnic areas,

boat launching sites, and/or easements abutting the river for the purpose of preserving or enhancing the river or facilitating the use of the river by the public for fishing, boating and other water related activities; and (b) purchase, outside of a river area, public access to the river area.

The right of eminent domain shall not be utilized in any purchase made pursuant to this section.

(3) The ~~((department))~~ commission is further authorized to: (a) Acquire by gift, devise, grant, or dedication the fee, an option to purchase, a right of first refusal or any other lesser right or interest in real property and upon acquisition such real property shall be held and managed within the scenic river system; and (b) accept grants, contributions, or funds from any agency, public or private, or individual for the purposes of this chapter.

(4) The ~~((department))~~ commission is hereby vested with the power to obtain injunctions and other appropriate relief against violations of any provisions of this chapter and any rules adopted under this section or agreements made under the provisions of this chapter.

Sec. 804. RCW 79.72.050 and 1977 ex.s. c 161 s 5 are each amended to read as follows:

(1) All state government agencies and local governments are hereby directed to pursue policies with regard to their respective activities, functions, powers, and duties which are designed to conserve and enhance the conditions of rivers which have been included in the system, in accordance with the management policies and the rules ~~((and regulations))~~ adopted by the ~~((department))~~ commission for such rivers. Local agencies are directed to pursue such policies with respect to all lands in the river area owned or leased by such local agencies. Nothing in this chapter shall authorize the modification of a shoreline management plan adopted by a local government and approved by the state pursuant to chapter 90.58 RCW without the approval of the department of ecology and local government. The policies adopted pursuant to this chapter shall be integrated, as fully as possible, with those of the shoreline management act of 1971.

(2) Nothing in this chapter shall grant to the committee of participating agencies or the ~~((department))~~ commission the power to restrict the use of private land without either the specific written consent of the owner thereof or the acquisition of rights in real property authorized by RCW 79.72.040 (as recodified by this act).

(3) Nothing in this chapter shall prohibit the department of natural resources from exercising its full responsibilities and obligations for the management of state trust lands.

Sec. 805. RCW 79.72.070 and 1988 c 36 s 58 are each amended to read as follows:

Nothing contained in this chapter shall affect the authority of the department of ~~((fisheries and the department of))~~ fish and wildlife to construct facilities or make improvements to facilitate the passage or propagation of fish nor shall

anything in this chapter be construed to interfere with the powers, duties, and authority of the department of ~~((fisheries or the department of))~~ fish and wildlife to regulate, manage, conserve, and provide for the harvest of fish or wildlife within any area designated as being in the state's scenic river system(~~(--PROVIDED; That))~~). No hunting shall be permitted in any state park.

PART IX ACQUIRING AND DEVELOPING PARK HOLDINGS

Sec. 901. RCW 43.51.070 and 1965 c 8 s 43.51.070 are each amended to read as follows:

The commission may receive and accept donations of lands for state park purposes, and shall ~~((have))~~ be responsible for the management and control of all lands so acquired. It may from time to time recommend to the legislature the acquisition of lands for park purposes by purchase or condemnation.

Sec. 902. RCW 43.51.110 and 1965 c 8 s 43.51.110 are each amended to read as follows:

The commissioner of public lands may, upon his or her own motion, and shall, when directed so to do by the ~~((state parks and recreation))~~ commission, withdraw from sale any land held by the state and not acquired directly from the United States with reservations as to the manner of sale thereof and the purposes for which it may be sold, and certify to the commission that such land is withheld from sale pursuant to the terms of this section.

All such land shall be under the care, charge, control, and supervision of the ~~((state parks and recreation))~~ commission, and after appraisal in such manner as the commission directs may be exchanged for land of equal value ~~((abutting upon a public highway))~~, and to this end the ~~((chairman))~~ chair and secretary of the commission may execute deeds of conveyance in the name of the state.

***Sec. 903.** *RCW 43.51.140 and 1982 c 156 s 2 are each amended to read as follows:*

Any such individual, group, organization, agency, club, or association desiring to obtain such permit shall make application therefor in writing to the commission, describing the lands proposed to be improved and stating the nature of the proposed improvement. Prior to granting a permit, the commission shall determine that the applicants are ~~((persons of good standing in the community in which they reside))~~ likely to actually improve the park, parkway, or land subject to the application.

*Sec. 903 was vetoed. See message at end of chapter.

Sec. 904. RCW 43.51.220 and 1965 c 8 s 43.51.220 are each amended to read as follows:

To encourage the development of the Puget Sound country as a recreational boating area, the commission is authorized to establish landing, launch ramp, and other facilities for small pleasure boats at places on Puget Sound frequented by

such boats and where the commission shall find such facilities will be of greatest advantage to the users of pleasure boats. The commission is authorized to acquire land or to make use of lands belonging to the state for such purposes, and to construct the necessary floats, launch ramp, and other desirable structures and to make such further development of any area used in connection therewith as in the judgment of the commission is best calculated to facilitate the public enjoyment thereof.

Sec. 905. RCW 43.51.237 and 1997 c 150 s 3 are each amended to read as follows:

(1) The commission shall develop a cost-effective plan to identify historic archaeological resources in at least one state park containing a military fort located in Puget Sound. The plan shall include the use of a professional archaeologist and volunteer citizens. ~~((By December 1, 1997, the commission shall submit a brief report to the appropriate standing committees of the legislature on how the plan will be implemented and the cost of the plan.))~~

(2) Any park land that is made available for use by recreational metal detectors under this section shall count toward the requirements established in RCW 43.51.235 (as recodified by this act).

Sec. 906. RCW 43.51.270 and 1995 c 211 s 4 are each amended to read as follows:

(1) The department of natural resources and the ~~((state parks and recreation))~~ commission shall have authority to negotiate ~~((a))~~ sales to the ~~((state parks and recreation))~~ commission, for park and outdoor recreation purposes, of trust lands at fair market value.

(2) The department of natural resources and the ~~((state parks and recreation))~~ commission shall negotiate a sale to the ~~((state parks and recreation))~~ commission of the lands and timber thereon identified in the joint study under section 4, chapter 163, Laws of 1985, and commonly referred to as the Point Lawrence trust property, San Juan county — on the extreme east point of Orcas Island. Timber conservation and management practices provided for in RCW 43.51.045 and 43.51.395 (as recodified by this act) shall govern the management of land and timber transferred under this subsection as of the effective date of the transfer, upon payment for the property, and nothing in this chapter shall be construed as restricting or otherwise modifying the department of natural resources' management, control, or use of such land and timber until such date.

NEW SECTION. Sec. 907. The commission is authorized to evaluate and acquire land under RCW 79.01.612 in cooperation with the department of natural resources.

NEW SECTION. Sec. 908. The commission may select land held by the department of natural resources for acquisition under RCW 79.08.102 (as recodified by this act) et seq.

PART X**SPECIAL PARKS—YAKIMA RIVER CONSERVATION AREA**

Sec. 1001. RCW 43.51.948 and 1977 ex.s. c 75 s 2 are each amended to read as follows:

For the purposes of RCW 43.51.946 through 43.51.956 (as recodified by this act), the Yakima river conservation area is to contain no more than the area delineated in appendix D on pages D-3, D-4, D-6, D-7, D-9, and D-10 of the report entitled "The Yakima River Regional Greenway" which resulted from the Yakima river study authorized in section 170, chapter 269, Laws of 1975, first extraordinary session. This area is also defined as sections 12 and 17, township 13 north, range 18 east totaling approximately 18.0 acres, sections 7, 17, 18, 20, 21, 28, 29, 32, 33, township 13 north, range 19 east totaling approximately 936.0 acres, and sections 4, 5, 8, 9, 17, township 12 north, range 19 east totaling approximately 793.7 acres.

PART XI**SPECIAL PARKS—SEASHORE CONSERVATION AREA**

Sec. 1101. RCW 43.51.720 and 1988 c 75 s 6 are each amended to read as follows:

Recreation management plans shall not prohibit or restrict public vehicles operated in the performance of official duties (~~((or))~~), vehicles responding to an emergency, or vehicles specially authorized by the director or the director's designee.

Sec. 1102. RCW 43.51.730 and 1988 c 75 s 8 are each amended to read as follows:

In preparing, adopting, or approving a recreation management plan, local jurisdictions and the commission shall consult with the ~~((department of fisheries; the))~~ department of fish and wildlife and the United States fish and wildlife service.

Sec. 1103. RCW 43.51.750 and 1988 c 75 s 12 are each amended to read as follows:

Any individual, partnership, corporation, association, organization, cooperative, local government, or state agency aggrieved by a decision of the commission under ~~((RCW 43.51.695 through 43.51.765))~~ this chapter may appeal under chapter 34.05 RCW.

PART XII**YOUTH DEVELOPMENT AND CONSERVATION CORPS**

Sec. 1201. RCW 43.51.510 and 1965 c 8 s 43.51.510 are each amended to read as follows:

There is hereby created and established a youth development and conservation division within the ~~((state parks and recreation))~~ commission ~~((hereafter referred to as the "commission"))~~. The commission shall appoint such supervisory

personnel as necessary to carry out the purposes of RCW 43.51.500 through 43.51.570 (as recodified by this act).

Sec. 1202. RCW 43.51.540 and 1982 c 70 s 1 are each amended to read as follows:

(1) The minimum compensation shall be at the rate of twenty-five dollars per week, except that up to the minimum state wage may be paid on the basis of assigned leadership responsibilities or special skills.

(2) Enrollees shall be furnished quarters, subsistence, medical and hospital services, transportation, equipment, as the commission may deem necessary and appropriate for their needs. Such quarters, subsistence, and equipment may be furnished by any governmental or public agency.

(3) The compensation of enrollees of any program under this chapter may be paid biweekly.

PART XIII UNDERWATER PARKS

Sec. 1301. RCW 43.51.432 and 1994 c 264 s 20 are each amended to read as follows:

The ~~((state parks and recreation))~~ commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

- (1) Plan, construct, and maintain underwater parks;
- (2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;
- (3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;
- (4) Accept gifts and donations for the benefit of underwater parks;
- (5) Facilitate private efforts to construct artificial reefs and underwater parks;
- (6) Work with the federal government, local governments and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council to carry out the purposes of ~~((RCW 43.51.430 through 43.51.438))~~ this chapter; and
- (7) Contract with other state agencies or local governments for the management of an underwater park unit.

PART XIV SPECIAL PARKS—WINTER RECREATION AREAS

Sec. 1401. RCW 43.51.290 and 1990 c 136 s 2 and 1990 c 49 s 2 are each reenacted and amended to read as follows:

In addition to its other powers, duties, and functions the ~~((state parks and recreation))~~ commission may:

(1) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

(2) Provide and issue upon payment of the proper fee, under RCW 43.51.300 (as recodified by this act), 43.51.320 (as recodified by this act), and 46.61.585, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

(3) Administer the snow removal operations for all designated winter recreational area parking spaces; and

(4) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to users of lands administered for winter recreation purposes under this section or under RCW 46.10.210, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of winter recreation consistent with this chapter and chapter 46.10 RCW shall not be presumed to be a known dangerous artificial latent condition for the purposes of this chapter.

PART XV RECREATIONAL VESSELS

Sec. 1501. RCW 88.12.015 and 1993 c 244 s 6 are each amended to read as follows:

(1) ~~((It is a misdemeanor, punishable under RCW 9.92.030, for any person to commit))~~ A violation of this chapter designated as an infraction ((under this chapter) is a misdemeanor, punishable under RCW 9.92.030, if ((during a period of three hundred sixty-five days the person has previously committed two infractions for violating the same provision under this chapter and if the violation is also committed during such period and is of the same provision as the previous violations)) the current violation is the person's third violation of the same provision of this chapter during the past three hundred sixty-five days.

(2) A violation designated in this chapter as a civil infraction shall constitute a ~~((misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court))~~ civil infraction pursuant to chapter 7.84 RCW.

Sec. 1502. RCW 88.12.165 and 1984 c 183 s 3 are each amended to read as follows:

(1) All reports made to the commission pursuant to RCW (~~88.12.130~~) 88.12.155 and 43.51.400 (as recodified by this act) shall be without prejudice to the person who makes the report and shall be for the confidential usage of governmental agencies, except as follows:

(a) Statistical information which shall be made public;

(b) The names and addresses of the operator and owner and the registration number or name of the vessel as documented which was involved in an accident or casualty and the names and addresses of any witnesses which, if reported, shall be disclosed upon written request to any person involved in a reportable accident, or, for a reportable casualty, to any member of a decedent's family or the personal representatives of the family.

(2) A report made to the commission pursuant to RCW (~~88.12.130~~) 88.12.155 and 43.51.400 (as recodified by this act) or copy thereof shall not be used in any trial, civil or criminal, arising out of an accident or casualty, except that solely to prove a compliance or failure to comply with the report requirements of RCW (~~88.12.130~~) 88.12.155 and 43.51.400 (as recodified by this act), a certified statement which indicates that a report has or has not been made to the commission shall be provided upon demand to any court or upon written request to any person who has or claims to have made a report.

Sec. 1503. RCW 88.12.175 and 1987 c 427 s 1 are each amended to read as follows:

Law enforcement authorities, fire departments, or search and rescue units of any city or county government shall provide to the commission a report, prepared by the local government agency regarding any boating accident occurring within their jurisdiction resulting in a death or injury requiring hospitalization. Such report shall be provided to the commission within ten days of the occurrence of the accident. The results of any investigation of the accident conducted by the city or county governmental agency shall be included in the report provided to the commission. At the earliest opportunity, but in no case more than forty-eight hours after becoming aware of an accident, the agency shall notify the commission of the accident. The commission shall have authority to investigate any boating accident. The results of any investigation conducted by the commission shall be made available to the local government for further processing. This provision does not eliminate the requirement for a boating accident report by the operator required under RCW (~~88.12.130~~) 88.12.155 (as recodified by this act).

The report of a county coroner, or any public official assuming the functions of a coroner, concerning the death of any person resulting from a boating accident, shall be submitted to the commission within one week of completion. Information in such report may be, together with information in other such reports, incorporated into the state boating accident report provided for in RCW 43.51.400(~~(5)~~) (4) (as

recodified by this act), and shall be for the confidential usage of governmental agencies as provided in RCW ~~((88.12.140))~~ 88.12.165 (as recodified by this act).

Sec. 1504. RCW 88.12.195 and 1993 c 244 s 20 are each amended to read as follows:

Such notice as is required by RCW 88.12.185 (as recodified by this act) shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his or her letters. Such notice shall inform the party where the vessel was taken up, and where it may be found, and what amount the taker-up or finder demands for his or her charges.

Sec. 1505. RCW 88.12.205 and 1993 c 244 s 21 are each amended to read as follows:

(1) In all cases where the notice required by RCW 88.12.185 (as recodified by this act) is not given personally, it shall be the duty of the taker-up to post up at the post office nearest the place where such vessel may be taken up, a written notice of the taking up of such vessel ~~((, which))~~. The written notice shall contain a description of the ((same)) vessel, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up.

(2) If the taker-up is traveling upon waters of the state, such notice shall additionally be posted up at the first post office he or she shall pass after the taking up ~~((, and))~~.

(3) In all cases, ~~((he or she))~~ the person who took up the vessel shall at the time when, and place where, he or she posts up such notice, also mail a copy of such notice, directed to the postmaster of each post office on waters of the state, and within fifty miles of the place where such vessel is taken up.

Sec. 1506. RCW 88.12.295 and 1989 c 393 s 1 are each amended to read as follows:

The legislature finds that the waters of Washington state provide a unique and valuable recreational resource to large and growing numbers of boaters. Proper stewardship of, and respect for, these waters requires that, while enjoying them for their scenic and recreational benefits, boaters must exercise care to assure that such activities do not contribute to the despoliation of these waters, and that watercraft be operated in a safe and responsible manner. The legislature has specifically addressed the topic of access to clean and safe waterways by requiring the 1987 boating safety study and by establishing the Puget Sound ~~((water quality authority))~~ action team.

The legislature finds that there is a need to educate Washington's boating community about safe and responsible actions on our waters and to increase the level and visibility of the enforcement of boating laws. To address the incidence of fatalities and injuries due to recreational boating on our state's waters, local and state efforts directed towards safe boating must be stimulated. To provide for safe waterways and public enjoyment, portions of the watercraft excise tax and boat

registration fees should be made available for boating safety and other boating recreation purposes.

In recognition of the need for clean waterways, and in keeping with the Puget Sound action team's water quality (~~authority's 1987 management~~) work plan, the legislature finds that adequate opportunities for responsible disposal of boat sewage must be made available. There is hereby established a five-year initiative to install sewage pumpout or sewage dump stations at appropriate marinas.

To assure the use of these sewage facilities, a boater environmental education program must accompany the five-year initiative and continue to educate boaters about boat wastes and aquatic resources.

The legislature also finds that, in light of the increasing numbers of boaters utilizing state waterways, a program to acquire and develop sufficient waterway access facilities for boaters must be undertaken.

To support boating safety, environmental protection and education, and public access to our waterways, the legislature declares that a portion of the income from boating-related activities, as specified in RCW 82.49.030 and 88.02.040, should support these efforts.

Sec. 1507. RCW 88.12.305 and 1994 c 264 s 81 are each amended to read as follows:

The commission, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound (~~water quality authority~~) action team shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

Sec. 1508. RCW 88.12.365 and 1993 c 244 s 36 are each amended to read as follows:

The commission shall, in consultation with interested parties, review progress on installation of sewage pumpout and dump units, the boater environmental education program, and the boating safety program. (~~The commission shall report its findings to the legislature by December 1994.~~)

Sec. 1509. RCW 88.12.385 and 1989 c 393 s 14 are each amended to read as follows:

The commission shall adopt rules as are necessary to carry out all sections of (~~this act~~) chapter 393, Laws of 1989 except for RCW (~~88.12.410;~~) 88.12.335 (~~as recodified by this act~~) and 82.49.030(~~and 88.12.450(1)~~). The commission shall comply with all applicable provisions of chapter 34.05 RCW in adopting the rules.

**PART XVI
RECODIFICATION**

NEW SECTION. Sec. 1601. The following sections are recodified as a new title in the Revised Code of Washington to be codified as Title 79A RCW:

RCW 43.51.020

RCW 43.51.030

RCW 43.51.040

RCW 43.51.045

RCW 43.51.046

RCW 43.51.048

RCW 43.51.050

RCW 43.51.052

RCW 43.51.055

RCW 43.51.060

RCW 43.51.061

RCW 43.51.062

RCW 43.51.063

RCW 43.51.065

RCW 43.51.070

RCW 43.51.090

RCW 43.51.100

RCW 43.51.110

RCW 43.51.112

RCW 43.51.1121

RCW 43.51.113

RCW 43.51.114

RCW 43.51.120

RCW 43.51.130

RCW 43.51.140

RCW 43.51.150

RCW 43.51.160

RCW 43.51.170

RCW 43.51.180

RCW 43.51.200

RCW 43.51.210

RCW 43.51.215

RCW 43.51.220

RCW 43.51.235

RCW 43.51.237

RCW 43.51.240

RCW 43.51.250

RCW 43.51.270

RCW 43.51.275

RCW 43.51.285
RCW 43.51.290
RCW 43.51.300
RCW 43.51.310
RCW 43.51.320
RCW 43.51.321
RCW 43.51.330
RCW 43.51.340
RCW 43.51.350
RCW 43.51.360
RCW 43.51.365
RCW 43.51.370
RCW 43.51.375
RCW 43.51.380
RCW 43.51.385
RCW 43.51.395
RCW 43.51.400
RCW 43.51.405
RCW 43.51.407
RCW 43.51.409
RCW 43.51.411
RCW 43.51.415
RCW 43.51.417
RCW 43.51.419
RCW 43.51.420
RCW 43.51.430
RCW 43.51.432
RCW 43.51.434
RCW 43.51.436
RCW 43.51.438
RCW 43.51.440
RCW 43.51.442
RCW 43.51.444
RCW 43.51.446
RCW 43.51.448
RCW 43.51.450
RCW 43.51.452
RCW 43.51.454
RCW 43.51.456
RCW 43.51.500
RCW 43.51.510
RCW 43.51.530
RCW 43.51.540

RCW 43.51.550
RCW 43.51.560
RCW 43.51.570
RCW 43.51.580
RCW 43.51.590
RCW 43.51.650
RCW 43.51.655
RCW 43.51.660
RCW 43.51.665
RCW 43.51.670
RCW 43.51.675
RCW 43.51.685
RCW 43.51.695
RCW 43.51.700
RCW 43.51.705
RCW 43.51.710
RCW 43.51.715
RCW 43.51.720
RCW 43.51.725
RCW 43.51.730
RCW 43.51.735
RCW 43.51.740
RCW 43.51.745
RCW 43.51.750
RCW 43.51.755
RCW 43.51.760
RCW 43.51.765
RCW 43.51.900
RCW 43.51.910
RCW 43.51.920
RCW 43.51.930
RCW 43.51.940
RCW 43.51.942
RCW 43.51.943
RCW 43.51.944
RCW 43.51.945
RCW 43.51.946
RCW 43.51.947
RCW 43.51.948
RCW 43.51.949
RCW 43.51.950
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RCW 43.51.953
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RCW 43.51.955
RCW 43.51.956
RCW 43.98.010
RCW 43.98.020
RCW 43.98.030
RCW 43.98.040
RCW 43.98.050
RCW 43.98.060
RCW 43.98.070
RCW 43.98.080
RCW 43.98.090
RCW 43.98A.005
RCW 43.98A.010
RCW 43.98A.020
RCW 43.98A.030
RCW 43.98A.040
RCW 43.98A.050
RCW 43.98A.060
RCW 43.98A.070
RCW 43.98A.080
RCW 43.98A.090
RCW 43.98A.100
RCW 43.98A.900
RCW 43.98B.005
RCW 43.98B.010
RCW 43.98B.020
RCW 43.98B.030
RCW 43.98B.900
RCW 43.98B.910
RCW 43.98B.920
RCW 43.99.010
RCW 43.99.020
RCW 43.99.025
RCW 43.99.030
RCW 43.99.040
RCW 43.99.050
RCW 43.99.060
RCW 43.99.070
RCW 43.99.080
RCW 43.99.095
RCW 43.99.100

RCW 43.99.110
RCW 43.99.120
RCW 43.99.124
RCW 43.99.126
RCW 43.99.130
RCW 43.99.135
RCW 43.99.142
RCW 43.99.146
RCW 43.99.150
RCW 43.99.170
RCW 43.99.800
RCW 43.99.810
RCW 43.99.820
RCW 43.99.830
RCW 43.99.900
RCW 43.99.910
RCW 67.18.005
RCW 67.18.010
RCW 67.18.020
RCW 67.18.030
RCW 67.18.040
RCW 67.18.050
RCW 67.18.900
RCW 67.32.010
RCW 67.32.020
RCW 67.32.030
RCW 67.32.040
RCW 67.32.050
RCW 67.32.060
RCW 67.32.070
RCW 67.32.080
RCW 67.32.090
RCW 67.32.100
RCW 67.32.110
RCW 67.32.130
RCW 67.32.140
RCW 70.88.010
RCW 70.88.020
RCW 70.88.030
RCW 70.88.040
RCW 70.88.050
RCW 70.88.060
RCW 70.88.070

RCW 70.88.080
RCW 70.88.090
RCW 70.88.100
RCW 70.117.010
RCW 70.117.015
RCW 70.117.020
RCW 70.117.025
RCW 70.117.030
RCW 70.117.040
RCW 77.12.720
RCW 77.12.730
RCW 77.12.740
RCW 79.08.102
RCW 79.08.104
RCW 79.08.106
RCW 79.08.1062
RCW 79.08.1064
RCW 79.08.1066
RCW 79.08.1069
RCW 79.08.1072
RCW 79.08.1074
RCW 79.08.1078
RCW 79.08.109
RCW 79.72.010
RCW 79.72.020
RCW 79.72.030
RCW 79.72.040
RCW 79.72.050
RCW 79.72.060
RCW 79.72.070
RCW 79.72.080
RCW 79.72.090
RCW 79.72.100
RCW 79.72.900
RCW 88.12.010
RCW 88.12.015
RCW 88.12.020
RCW 88.12.025
RCW 88.12.029
RCW 88.12.032
RCW 88.12.033
RCW 88.12.035
RCW 88.12.045

RCW 88.12.055
RCW 88.12.065
RCW 88.12.075
RCW 88.12.085
RCW 88.12.095
RCW 88.12.105
RCW 88.12.115
RCW 88.12.125
RCW 88.12.135
RCW 88.12.145
RCW 88.12.155
RCW 88.12.165
RCW 88.12.175
RCW 88.12.185
RCW 88.12.195
RCW 88.12.205
RCW 88.12.215
RCW 88.12.218
RCW 88.12.222
RCW 88.12.225
RCW 88.12.227
RCW 88.12.230
RCW 88.12.232
RCW 88.12.235
RCW 88.12.245
RCW 88.12.250
RCW 88.12.255
RCW 88.12.260
RCW 88.12.265
RCW 88.12.275
RCW 88.12.276
RCW 88.12.278
RCW 88.12.279
RCW 88.12.285
RCW 88.12.295
RCW 88.12.305
RCW 88.12.315
RCW 88.12.325
RCW 88.12.335
RCW 88.12.345
RCW 88.12.355
RCW 88.12.365
RCW 88.12.375

RCW 88.12.385
RCW 88.12.500
RCW 88.12.505
RCW 88.27.010
RCW 88.27.020
RCW 88.27.030
RCW 88.27.040
RCW 88.27.050
RCW 88.27.900
RCW 90.56.090

**PART XVII
REPEALED SECTIONS**

NEW SECTION. Sec. 1701. The following acts or parts of acts are each repealed:

- (1) RCW 43.51.010 (Definitions) and 1965 c 8 s 43.51.010;
- (2) RCW 79.08.108 (Exchange of lands to secure state park lands) and 1988 c 128 s 61 & 1953 c 96 s 1;
- (3) RCW 43.51.047 (Sale of timber) and 1995 c 211 s 2 & 1984 c 82 s 3;
- (4) RCW 43.51.080 (Parks in island counties) and 1965 c 8 s 43.51.080;
- (5) RCW 43.51.545 (Compensation—Biweekly payment of compensation authorized) and 1965 ex.s. c 48 s 3;
- (6) RCW 43.51.260 (Acquisition of Wallace Falls property authorized) and 1969 c 41 s 1 & 1965 c 146 s 2;
- (7) RCW 43.51.355 (Authority of commission to implement RCW 43.51.350) and 1977 ex.s. c 266 s 2;
- (8) RCW 43.51.230 (Lease with option to purchase parental school facilities) and 1965 c 8 s 43.51.230; and
- (9) RCW 88.12.395 (Committee to adopt rules) and 1989 c 393 s 15.

**PART XVIII
CODIFICATION DIRECTIVE**

NEW SECTION. Sec. 1801. Sections 101, 301, 401, 701, 907, and 908 of this act are each added to Title 79A RCW, created in section 1601 of this act.

**PART XIX
SEVERABILITY**

NEW SECTION. Sec. 1901. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 20, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 10, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 10, 1999.

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

"I am returning herewith, without my approval as to section 903, Substitute Senate Bill No. 5179 entitled:

"AN ACT Relating to the authority of the parks and recreation commission;"

I am returning herewith without my approval as to section 903, Substitute Senate Bill 5179. Section 903 amends RCW 43.51.140 and chapter 156, section 2, Laws of 1982. This provision of law was recently amended by my signing of House Bill 1331. The language in section 903 does not correspond to the change made in House Bill 1331. To avoid conflicting statutory provisions, I am vetoing section 903.

For this reason, I have vetoed section 903 of Substitute Senate Bill No. 5179.

With the exception of section 903, Substitute Senate Bill No. 5179 is approved."

CHAPTER 250

[Substitute Senate Bill 5219]

PORT DISTRICTS LESS THAN COUNTY-WIDE—ANNEXATION

AN ACT Relating to annexations by less than county-wide port districts in areas having no registered voters; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature intends annexation procedures set forth in sections 2 through 5 of this act to be alternative methods available to port districts that are less than county-wide. The legislature does not intend the alternative procedures to supersede any other method authorized by chapter 53.04 RCW or other law for annexation of territory to a port district.

NEW SECTION. Sec. 2. A port district that is less than county-wide, and that is located in a county with a population of less than ninety thousand and located in the Interstate 5 corridor, may petition for annexation of an area that is contiguous to its boundaries, is not located within the boundaries of any other port district, and contains no registered voters. The petition must be in writing, addressed to and filed with the port commission, and signed by the owners of not less than seventy-five percent of the property value in the area to be annexed, according to the assessed value for general taxation. The petition must contain a legal description of the property according to government legal subdivisions or legal plats, or a sufficient metes and bounds description, and must be accompanied by a plat outlining the boundaries of the property to be annexed.

NEW SECTION. Sec. 3. If a petition meeting the requirements set forth in section 2 of this act is filed with the commission, the commission shall determine a date, time, and location for a hearing on the petition and shall provide public notice of that hearing and its nature by publishing the notice in one issue of a newspaper of general circulation in the district and by posting the notice in three

public places within the territory proposed for annexation. The commission may require proof of a petition's authenticity before complying with notice requirements imposed by this section and may require the signers of a petition to bear the costs of publishing and posting notice.

NEW SECTION. Sec. 4. At the hearing, the commission may determine to annex all or any portion of the proposed area described in the petition. Following the hearing, the commission shall by resolution approve or disapprove annexation. Upon passage of the resolution, the commission shall file, with the board of county commissioners of the county in which the annexed property is located, a certified copy of the resolution. On the date fixed in the resolution, the area annexed becomes part of the district.

NEW SECTION. Sec. 5. (1) By a majority vote of the commission, and with the written consent of all the owners of the property to be annexed, a port commission of a district that is less than county-wide, and that is located in a county with a population of less than ninety thousand and located in the Interstate 5 corridor, may annex, for industrial development or other port district purposes, property contiguous to the district's boundaries and not located within the boundaries of any other port district.

(2) The written consent required by subsection (1) of this section must contain a full and correct legal description of the property to be annexed, must include the signature of all owners of the property to be annexed, and must be addressed to and filed with the commission.

(3) If the commission approves annexation under this section, it shall do so by resolution and shall file a certified copy of the resolution with the board of county commissioners of the county in which the annexed property is located. Upon the date fixed in the resolution, the area annexed becomes part of the district.

NEW SECTION. Sec. 6. No property within the territory annexed under sections 2 through 5 of this act may be taxed or assessed for the payment of any outstanding indebtedness of the port district as it existed before the annexation unless another law requires the tax or assessment.

Passed the Senate April 20, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 251

[Engrossed Substitute Senate Bill 5290]

FRESHWATER AQUATIC WEEDS MANAGEMENT PROGRAM—ADVISORY COMMITTEE

AN ACT Relating to the freshwater aquatic weeds management program; amending RCW 43.21A.660; and adding a new section to chapter 43.21A RCW.

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

Sec. 1. RCW 43.21A.660 and 1996 c 190 s 1 are each amended to read as follows:

Funds in the freshwater aquatic weeds account may be appropriated to the department of ecology to develop a freshwater aquatic weeds management program ~~((tø)).~~ Funds shall be expended as follows:

(1) ~~((Issue))~~ No less than two-thirds of the appropriated funds shall be issued as grants to (a) cities, counties, tribes, special purpose districts, and state agencies to prevent, remove, reduce, or manage excessive freshwater aquatic weeds; (b) fund demonstration or pilot projects consistent with the purposes of this section; and (c) fund hydrilla eradication activities in waters of the state. Except for hydrilla eradication activities, such grants shall only be issued for lakes, rivers, or streams with a public boat launching ramp or which are designated by the department of fish and wildlife for fly-fishing. The department shall give preference to projects having matching funds or in-kind services; and

(2) No more than one-third of the appropriated funds shall be expended to:

(a) Develop public education programs relating to preventing the propagation and spread of freshwater aquatic weeds; and

~~((?))~~ (b) Provide technical assistance to local governments and citizen groups(;

~~(4) Fund demonstration or pilot projects consistent with the purposes of this section; and~~

~~(5) Fund hydrilla eradication activities in waters of the state)).~~

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21A RCW to read as follows:

(1) The department shall appoint an advisory committee to oversee the freshwater aquatic weeds management program.

(2) The advisory committee shall include representatives from the following groups:

(a) Recreational boaters interested in freshwater aquatic weed management;

(b) Residents adjacent to lakes, rivers, or streams with public boat launch facilities;

(c) Local governments;

(d) Scientific specialists;

(e) Pesticide registrants, as defined in RCW 15.58.030(34);

(f) Certified pesticide applicators, as defined in RCW 17.21.020(5), who specialize in the use of aquatic pesticides; and

(g) If chapter . . . , Laws of 1999 (Senate Bill No. 5315) is enacted by June 30, 1999, the aquatic nuisance species coordinating committee.

(3) The advisory committee shall review and provide recommendations to the department on freshwater aquatic weeds management program activities and budget and establish criteria for grants funded from the freshwater aquatic weeds account.

Passed the Senate April 20, 1999.
Passed the House April 12, 1999.
Approved by the Governor May 10, 1999.
Filed in Office of Secretary of State May 10, 1999.

CHAPTER 252

[Senate Bill 5307]

UNDERGROUND MINING—SURFACE DISTURBANCES

AN ACT Relating to the reclamation of surface disturbances caused by underground mining; amending RCW 78.44.031; and adding a new section to 78.44 RCW.

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

Sec. 1. RCW 78.44.031 and 1997 c 142 s 1 are each amended to read as follows:

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

(1) "Approved subsequent use" means the post surface-mining land use contained in an approved reclamation plan and approved by the local land use authority.

(2) "Completion of surface mining" means the cessation of mining and directly related activities in any segment of a surface mine that occurs when essentially all minerals that can be taken under the terms of the reclamation permit have been depleted except minerals required to accomplish reclamation according to the approved reclamation plan.

(3) "Department" means the department of natural resources.

(4) "Determination" means any action by the department including permit issuance, reporting, reclamation plan approval or modification, permit transfers, orders, fines, or refusal to issue permits.

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas. Disturbed areas shall also include aboveground waste rock sites and tailing facilities, and other surface manifestations of underground mines.

Disturbed areas do not include:

(a) Surface mine access roads unless these have characteristics of topography, drainage, slope stability, or ownership that, in the opinion of the department, make reclamation necessary; ~~(and)~~

(b) Lands that have been reclaimed to all standards outlined in this chapter, rules of the department, any applicable SEPA document, and the approved reclamation plan; and

(c) Subsurface aspects of underground mines, such as portals, tunnels, shafts, pillars, and stopes.

(6) "Miner" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, including every public or governmental agency engaged in surface mining (~~((from the surface))~~).

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

(8) "Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.

Operations specifically include:

(a) The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;

(b) Blasting, equipment maintenance, sorting, crushing, and loading;

(c) On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;

(d) Transporting minerals to and from the mine, on site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.

(9) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(10) "Permit holder" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining and/or the operation of surface mines, whether individually, jointly, or through subsidiaries, agents, employees, operators, or contractors who holds a state reclamation permit.

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment (~~((and))~~), areas under stockpiled materials, and aboveground waste rock and tailing facilities, and all other surface disturbances associated with underground mines. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

(12) "Reclamation setbacks" include those lands along the margins of surface mines wherein minerals and overburden shall be preserved in sufficient volumes to accomplish reclamation according to the approved plan and the minimum reclamation standards. Maintenance of reclamation setbacks may not preclude other mine-related activities within the reclamation setback.

(13) "Recycling" means the reuse of minerals or rock products.

(14) "Screening" consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of surface mining on adjacent properties and/or the environment.

(15) "Segment" means any portion of the surface mine that, in the opinion of the department:

(a) Has characteristics of topography, drainage, slope stability, ownership, mining development, or mineral distribution, that make reclamation necessary;

(b) Is not in use as part of surface mining and/or related activities; and

(c) Is larger than seven acres and has more than five hundred linear feet of working face except as provided in a segmental reclamation agreement approved by the department.

(16) "SEPA" means the state environmental policy act, chapter 43.21C RCW and rules adopted thereunder.

(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals (~~from the surface~~) results in:

(i) More than three acres of disturbed area;

(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

(iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.

(b) Surface mines include areas where mineral extraction from the surface or subsurface occurs by the auger method or by reworking mine refuse or tailings, when (~~these activities~~) the disturbed area exceeds the size or height thresholds listed in (a) of this subsection.

(c) Surface mining occurs when operations have created or are intended to create a surface mine as defined by this subsection.

(d) Surface mining shall exclude excavations or grading used:

(i) Primarily for on-site construction, on-site road maintenance, or on-site landfill construction;

(ii) For the purpose of public safety or restoring the land following a natural disaster;

(iii) For the purpose of removing stockpiles;

(iv) For forest or farm road construction or maintenance on site or on contiguous lands;

(v) Primarily for public works projects if the mines are owned or primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area; and

(vi) For sand authorized by RCW 43.51.685(~~and~~

~~(vii) For underground mines~~)).

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with other sediments within four vertical feet of the ground surface.

NEW SECTION. Sec. 2. A new section is added to chapter 78.44 RCW to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department of ecology shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 20, 1999.

Passed the House April 7, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 253

[Engrossed Senate Bill 5371]

INTERCITY PASSENGER RAIL SERVICE

AN ACT Relating to intercity passenger rail service; and adding new sections to chapter 47.79 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.79 RCW to read as follows:

Subject to appropriation, the department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to or used in association with state intercity passenger rail service which may include, but are not limited to, depots, platforms, parking areas, and maintenance facilities. The department is authorized

to contract with a public or private entity for the operation, maintenance, and/or management of these facilities.

NEW SECTION. Sec. 2. A new section is added to chapter 47.79 RCW to read as follows:

Subject to appropriation, the department is authorized to accept and expend or use gifts, grants, and donations for the benefit of any depot, platform, parking area, maintenance facility, or other associated rail facility. However, such an expenditure shall be for the public benefit of the state's intercity passenger rail service.

NEW SECTION. Sec. 3. A new section is added to chapter 47.79 RCW to read as follows:

Subject to appropriation, the department is authorized to exercise all the powers and perform all the duties necessary, convenient, or incidental to the planning, designing, constructing, improving, repairing, operating, and maintaining real property adjacent to or used in association with the state intercity passenger rail service which may include, but are not limited to, depots, platforms, parking areas, and maintenance facilities, even if such real property is owned or controlled by another entity. However, any expenditure of public funds for these purposes shall be directly related to public benefit of the state's intercity passenger rail service. The department shall enter into a written contract with the affected real property owners to secure the public's investment.

Passed the Senate March 17, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 254

[Senate Bill 5385]

CULTURAL ARTS, STADIUM, AND CONVENTION DISTRICTS—DISSOLUTION

AN ACT Relating to dissolution of cultural arts, stadium and convention districts; and amending RCW 67.38.160.

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

Sec. 1. RCW 67.38.160 and 1982 1st ex.s. c 22 s 16 are each amended to read as follows:

A cultural arts, stadium and convention district established in accordance with this chapter shall be dissolved and its affairs liquidated by either of the following methods:

(1) When so directed by a majority of persons in the district voting on such question. An election placing such question before the voters may be called in the following manner:

~~((+))~~ (a) By resolution of the cultural arts, stadium and convention district governing authority;

~~((2))~~ (b) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

~~((3))~~ (c) By petition calling for such election signed by at least ten percent of the qualified voters residing within the district filed with the auditor of the county wherein the largest portion of the district is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety-day period as designated by the petition sponsors.

With dissolution of the district, any outstanding obligations and bonded indebtedness of the district shall be satisfied or allocated by mutual agreement to the county or counties and component cities of the cultural arts, stadium and convention district.

(2) By submission of a petition signed by at least two-thirds of the legislative bodies who have representatives on the district governing body for an order of dissolution to the superior court of a county of the district. All of the signatures must have been collected within one hundred twenty days of the date of submission to the court. The procedures for dissolution provided in RCW 53.48.030 through 53.48.120 shall apply, except that the balance of any assets, after payment of all costs and expenses, shall be divided among the county or counties and component cities of the district on a per capita basis. Any duties to be performed by a county official pursuant to RCW 53.48.030 through 53.48.120 shall be performed by the relevant official of the county in which the petition for dissolution is filed.

Passed the Senate April 20, 1999.

Passed the House April 13, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 255

[Engrossed Substitute Senate Bill 5424]

AQUATIC PLANT MANAGEMENT—COMMERCIAL HERBICIDES

AN ACT Relating to aquatic plant management; adding new sections to chapter 90.48 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 the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by the invasion of nuisance and noxious aquatic weeds. Once established, these nuisance and noxious aquatic weeds can colonize the shallow shorelines and other areas of lakes with dense surface vegetation mats that degrade water quality, pose a threat to swimmers, and restrict use of lakes. Algae can generate health and safety conditions dangerous to fish, wildlife, and humans. The current environmental impact statement is causing difficulty in responding to environmentally damaging weed and algae problems. Many commercially available herbicides have been

demonstrated to be effective in controlling nuisance and noxious aquatic weeds and algae and do not pose a risk to the environment or public health. The purpose of this act is to allow the use of commercially available herbicides that have been approved by the environmental protection agency and the department of agriculture and subject to rigorous evaluation by the department of ecology through an environmental impact statement for the aquatic plant management program.

NEW SECTION. Sec. 2. A new section is added to chapter 90.48 RCW to read as follows:

(1) The department of ecology shall update the final supplemental environmental impact statement completed in 1992 for the aquatic plant management program to reflect new information on herbicides evaluated in 1992 and new, commercially available herbicides. The department shall maintain the currency of the information on herbicides and evaluate new herbicides as they become commercially available.

(2) For the 1999 treatment season, the department shall permit by May 15, 1999, municipal experimental application of herbicides such as hydrothol 191 for algae control in lakes managed under chapter 90.24 RCW. If experimental use is determined to be ineffective, then the department shall within fourteen days consult with other state, federal, and local agencies and interested parties, and may permit the use of copper sulfate. The Washington institute for public policy shall contract for a study on the lake-wide effectiveness of any herbicide used under this subsection. Prior to issuing the contract for the study, the institute for public policy shall determine the parameters of the study in consultation with licensed applicators who have recent experience treating the lake and with the nonprofit corporation that participated in centennial clean water fund phase one lake management studies for the lake. The parameters must include measurement of the lake-wide effectiveness of the application of the herbicide in maintaining beneficial uses of the lake, including any uses designated under state or federal water quality standards. The effectiveness of the application shall be determined by objective criteria such as turbidity of the water, the effectiveness in killing algae, any harm to fish or wildlife, any risk to human health, or other criteria developed by the institute. The results of the study shall be reported to the appropriate legislative committees by December 1, 1999. A general fund appropriation in the amount of \$35,000 is provided to the Washington institute for public policy for fiscal year 1999 for the study required under this subsection.

NEW SECTION. Sec. 3. A new section is added to chapter 90.48 RCW to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must

be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology, the department of fish and wildlife, the department of agriculture, the department of health, and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department of fish and wildlife may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in the omnibus appropriations act, this act is null and void.

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

Passed the Senate April 22, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 256

[Senate Bill 5502]

MARINE EMPLOYEES—SALARY SURVEY

AN ACT Relating to a salary survey report by the marine employees' commission; amending RCW 47.64.220; adding a new section to chapter 42.17 RCW; and creating a new section.

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

Sec. 1. RCW 47.64.220 and 1989 c 327 s 2 are each amended to read as follows:

(1) Prior to collective bargaining, the marine employees' commission shall conduct a salary survey. The results of the survey shall be published in a report

which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties. The commission shall make such other findings of fact as the parties may request during bargaining or impasse.

(2) Except as provided in subsection (3) of this section, salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter 42.17 RCW.

(3) A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data upon which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order.

NEW SECTION. Sec. 2. A new section is added to chapter 42.17 RCW to read as follows:

Salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2) is exempt from disclosure under this chapter except as provided in RCW 47.64.220.

NEW SECTION. Sec. 3. Section 1, chapter . . ., Laws of 1999 (section 1 of this act) is a clarification of existing law and applies retroactively.

Passed the Senate April 20, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 257

[Second Substitute Senate Bill 5536]

LAKE WHATCOM MUNICIPAL WATERSHED—PILOT PROJECT ON WATER QUALITY

AN ACT Relating to state forest lands and municipal drinking water protection; and amending RCW 79.01.128.

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

Sec. 1. RCW 79.01.128 and 1971 ex.s. c 234 s 11 are each amended to read as follows:

(1) In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the

department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology: PROVIDED, That if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

(2) The department shall initiate a pilot project for the municipal watershed delineated by the Lake Whatcom hydrographic boundaries to determine what factors need to be considered to achieve water quality standards beyond those required under chapter 90.48 RCW and what additional management actions can be taken on state trust lands that can contribute to such higher water quality standards. The department shall establish an advisory committee consisting of a representative each of the city of Bellingham, Whatcom county, the Whatcom county water district 10, the department of ecology, the department of fish and wildlife, and the department of health, and three general citizen members to assist in this pilot project. In the event of differences of opinion among the members of the advisory committee, the committee shall attempt to resolve these differences through various means, including the retention of facilitation or mediation services.

(3) The pilot project in subsection (2) of this section shall be completed by June 30, 2000. The department shall defer all timber sales in the Lake Whatcom hydrographic boundaries until the pilot project is complete.

(4) Upon completion of the study, the department shall provide a report to the natural resources committee of the house of representatives and to the natural resources, parks, and recreation committee of the senate summarizing the results of the study.

(5) The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in this section, RCW 79.44.003 and chapter 79.68 RCW shall be construed to affect any existing rights held by third parties in the lands applied for.

Passed the Senate April 22, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 258

[Substitute Senate Bill 5638]

FISH AND WILDLIFE ENFORCEMENT CODE

AN ACT Relating to making corrections to the fish and wildlife enforcement code; amending RCW 77.15.030, 77.15.400, 77.15.410, 77.15.430, 77.15.170, 77.15.230, 77.15.460, 77.15.600, 77.15.190, 77.15.550, 77.15.670, and 77.16.070; and repealing RCW 77.15.200, and 77.32.094.

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

Sec. 1. RCW 77.15.030 and 1998 c 190 s 4 are each amended to read as follows:

Where it is unlawful to hunt, take, fish, ~~((or))~~ possess, or traffic in big game or protected or endangered fish or wildlife, then each individual animal unlawfully taken or possessed is a separate offense.

Sec. 2. RCW 77.15.400 and 1998 c 190 s 9 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of ~~((game))~~ wild birds in the second degree if the person:

(a) Hunts for, takes, or possesses a ~~((game))~~ wild bird and the person does not have and possess all licenses, tags, stamps, and permits required under this title;

(b) Maliciously destroys, takes, or harms the eggs or nests of a game bird except when authorized by permit; ~~((or))~~

(c) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas ~~((including game reserves))~~, closed times, or other rule addressing the manner or method of hunting or possession of ~~((game))~~ wild birds; or

(d) Possesses a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird.

(2) A person is guilty of unlawful hunting of ~~((game))~~ wild birds in the first degree if the person ~~((hunts game birds and the person))~~ takes or possesses two times or more than the possession or bag limit for ~~((such))~~ game birds allowed by rule of the commission or director.

(3)(a) Unlawful hunting of ~~((game))~~ wild birds in the second degree is a misdemeanor.

(b) Unlawful hunting of ~~((game))~~ wild birds in the first degree is a gross misdemeanor.

Sec. 3. RCW 77.15.410 and 1998 c 190 s 10 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of big game in the second degree if the person:

(a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title; ~~((or))~~

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(2) A person is guilty of unlawful hunting of big game in the first degree if the person was previously convicted of any crime under this title involving unlawful hunting, killing, possessing, or taking big game, and within five years of the date that the prior conviction was entered the person:

(a) Hunts for big game and
~~—(a) The person~~) does not have and possess all licenses, tags, or permits required under this title; ~~((or))~~

(b) ~~((The act was))~~ Acts in violation of any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, or closed times; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor.

(b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all licenses or tags involved in the crime and the department shall order the person's hunting privileges suspended for two years.

Sec. 4. RCW 77.15.430 and 1998 c 190 s 11 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of ~~((game))~~ wild animals in the second degree if the person:

(a) Hunts for, takes, or possesses a ~~((game))~~ wild animal that is not classified as big game, and does not have and possess all licenses, tags, or permits required by this title; ~~((or))~~

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas including game reserves, closed times, or other rule addressing the manner or method of hunting or possession of ~~((game))~~ wild animals not classified as big game; or

(c) Possesses a wild animal that is not classified as big game taken during a closed season for that wild animal or from a closed area for that wild animal.

(2)~~((a))~~ A person is guilty of unlawful hunting of ~~((game))~~ wild animals in the first degree if the person ~~((hunts a game animal that is not classified as big game; and~~

~~—(b) The person~~) takes or possesses two times or more than the possession or bag limit for ~~((such game))~~ wild animals that are not classified as big game animals as allowed by rule of the commission or director.

(3)(a) Unlawful hunting of ~~((game))~~ wild animals in the second degree is a misdemeanor.

(b) Unlawful hunting of ~~((game))~~ wild animals in the first degree is a gross misdemeanor.

Sec. 5. RCW 77.15.170 and 1998 c 190 s 21 are each amended to read as follows:

(1) A person is guilty of waste of fish and wildlife in the second degree if:

(a) The person kills, takes, or possesses fish, shellfish, or wildlife and the value of the fish, shellfish, or wildlife is greater than twenty dollars but less than two hundred fifty dollars; and

(b) The person recklessly allows such fish, shellfish, or wildlife to be wasted.

(2) A person is guilty of waste of fish and wildlife in the first degree if:

(a) The person kills, takes, or possesses (~~food~~) fish, shellfish, (~~game fish; game birds;~~) or (~~game animals~~) wildlife having a value of two hundred fifty dollars or more or wildlife classified as big game; and

(b) The person recklessly allows such fish, shellfish, or wildlife to be wasted.

(3)(a) Waste of fish and wildlife in the second degree is a misdemeanor.

(b) Waste of fish and wildlife in the first degree is a gross misdemeanor. Upon conviction, the department shall revoke any license or tag used in the crime and shall order suspension of the person's privileges to engage in the activity in which the person committed waste of fish and wildlife in the first degree for a period of one year.

(4) It is prima facie evidence of waste if a processor purchases or engages a quantity of food fish, shellfish, or game fish that cannot be processed within sixty hours after the food fish, game fish, or shellfish are taken from the water, unless the food fish, game fish, or shellfish are preserved in good marketable condition.

Sec. 6. RCW 77.15.230 and 1998 c 190 s 26 are each amended to read as follows:

(1) A person is guilty of unlawful use of department lands or facilities if the person enters upon, uses, or remains upon department-owned or department-controlled lands or facilities in violation of any rule of the department.

(2) Unlawful use of department lands or facilities is a misdemeanor.

Sec. 7. RCW 77.15.460 and 1998 c 190 s 28 are each amended to read as follows:

(1) A person is guilty of unlawful possession of a loaded firearm in a motor vehicle if:

(a) The person carries, transports, conveys, possesses, or controls a rifle or shotgun in or on a motor vehicle; and

(b) The rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

(2) A person is guilty of unlawful use of a loaded firearm if the person negligently shoots a firearm from, across, or along the maintained portion of a public highway.

(3) Unlawful possession of a loaded firearm in a motor vehicle or unlawful use of a loaded firearm is a misdemeanor.

(4) This section does not apply if the person:

(a) Is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer's respective jurisdiction;

(b) Possesses a disabled hunter's permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities.

(5) For purposes of this section, a firearm shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the firearm.

Sec. 8. RCW 77.15.600 and 1998 c 190 s 32 are each amended to read as follows:

(1) A person is guilty of engaging in commercial wildlife activity without a license if the person:

(a) Deals in raw furs for commercial purposes and does not hold a fur dealer license required by chapter 77.32 RCW; or

(b) Practices taxidermy for ~~((profit))~~ commercial purposes and does not hold a taxidermy license required by chapter 77.32 RCW~~((; or~~

~~—(c) Operates a game farm without a license required by chapter 77.32 RCW)).~~

(2) Engaging in commercial wildlife activities without a license is a gross misdemeanor.

Sec. 9. RCW 77.15.190 and 1998 c 190 s 34 are each amended to read as follows:

(1) A person is guilty of unlawful trapping if the person:

(a) Sets out traps that are capable of taking wild animals, game animals, or furbearing mammals and does not possess all licenses, tags, or permits required under this title; ~~((or))~~

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the trapping of wild animals; or

(c) Fails to identify the owner of the traps or devices by neither (i) attaching a metal tag with the owner's department-assigned identification number or the name and address of the trapper legibly written in numbers or letters not less than one-eighth inch in height nor (ii) inscribing into the metal of the trap such number or name and address.

(2) Unlawful trapping is a misdemeanor.

Sec. 10. RCW 77.15.550 and 1998 c 190 s 40 are each amended to read as follows:

(1) A person is guilty of violating commercial fishing area or time in the second degree if the person acts for commercial purposes and takes, fishes for, possesses, delivers, or receives food fish or shellfish:

(a) At a time not authorized by statute or rule; ~~((or))~~

(b) From an area that was closed to the taking of such food fish or shellfish for commercial purposes by statute or rule; or

(c) If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department.

(2) A person is guilty of violating commercial fishing area or time in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The person acted with knowledge that the area or time was not open to the taking or fishing of food fish or shellfish for commercial purposes; and

(b) The violation involved two hundred fifty dollars or more worth of food fish or shellfish.

(3)(a) Violating commercial fishing area or time in the second degree is a gross misdemeanor.

(b) Violating commercial fishing area or time in the first degree is a class C felony.

Sec. 11. RCW 77.15.670 and 1998 c 190 s 60 are each amended to read as follows:

(1) A person is guilty of ~~((unlawful hunting or fishing when))~~ violating a suspension of department privileges ((are revoked or suspended)) in the second degree if the person ~~((hunts or fishes and the person's privilege to engage in such hunting or fishing))~~ engages in any activity that is licensed by the department and the person's privileges to engage in that activity were revoked or suspended by any court or the department.

(2) A person is guilty of ~~((unlawful hunting or fishing when))~~ violating a suspension of department privileges ((are revoked or suspended)) in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The suspension of privileges that was violated was a permanent suspension;

(b) The person takes or possesses more than two hundred fifty dollars' worth of unlawfully taken food fish, wildlife, game fish, seaweed, or shellfish; or

(c) The violation involves the hunting, taking, or possession of fish or wildlife classified as endangered or threatened or big game.

(3)(a) ~~((Unlawful hunting or fishing when))~~ Violating a suspension of department privileges ((are revoked or suspended)) in the second degree is a gross misdemeanor. Upon conviction, the department shall order permanent suspension of the person's privileges to engage in such hunting or fishing activities.

(b) ~~((Unlawful hunting or fishing when))~~ Violating a suspension of department privileges ((are revoked or suspended)) in the first degree is a class C felony. Upon conviction, the department shall order permanent suspension of all privileges to hunt, fish, trap, or take wildlife, food fish, or shellfish.

(4) As used in this section, hunting includes trapping with a trapping license.

Sec. 12. RCW 77.16.070 and 1980 c 78 s 75 are each amended to read as follows:

~~((It is unlawful to hunt))~~ (1) A person is guilty of hunting while under the influence of intoxicating liquor or drugs if the person hunts wild animals or wild birds while under the influence of intoxicating liquor or drugs.

(2) Hunting while under the influence of intoxicating liquor or drugs is a gross misdemeanor.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

(1) RCW 77.15.200 (Furbearing animal traps—Failure to identify—Penalty) and 1998 c 190 s 23; and

(2) RCW 77.32.094 (Validity of licenses issued by department of fisheries and department of wildlife) and 1994 c 255 s 14.

Passed the Senate April 21, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 259

[Substitute Senate Bill 5640] ELECTIONS—ABSENTEE BALLOTS

AN ACT Relating to elections; amending RCW 29.62.020; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) The current statute relating to the timing of the primary election may not allow adequate time for absentee voters, especially military personnel living overseas, to review the candidates and issues appearing on the general election ballot before casting their votes;

(2) The proliferation of permanent absentee voters presents increasing difficulties for county auditors to canvass ballots in a timely way, which in turn may adversely affect the general election campaign of a candidate involved in a close primary race; and

(3) A delay in counting votes and processing ballots negatively impacts the public's right to timely election results and thus harms our electoral process.

Therefore, the mission of the task force established by section 2 of this act includes, but is not limited to, a review of issues relating to the timing of the primary election, the canvassing of ballots, and the certification of election results. The task force shall consider alternates to the current statutes that relate to these issues, and shall provide recommendations accordingly.

NEW SECTION. Sec. 2. A task force to study and make recommendations regarding the date for primary elections is established. The task force membership consists of the following thirteen members:

(1) Three citizen members from across the state, appointed jointly by the secretary of state, the president of the senate, and the co-speakers of the house of representatives;

(2) Two members of the senate, one from each of the largest two caucuses, appointed by the president of the senate, and two members of the house of

representatives, one from each of the largest two caucuses, appointed by the co-speakers of the house of representatives;

(3) The secretary of state or the secretary's designee;

(4) Three county elections officials designated by the Washington Association of County Officials; and

(5) A representative of each major political party in the state, appointed by the chair of the state central committee for the party.

NEW SECTION. Sec. 3. The task force shall report its recommendations to the governor, the secretary of state, and the appropriate standing committees of the senate and house of representatives no later than December 1, 1999. The task force terminates on December 31, 1999.

Sec. 4. RCW 29.62.020 and 1995 c 139 s 2 are each amended to read as follows:

(1) ~~((No later than the tenth day after a special election or primary and no later than the fifteenth day after a general election, the county auditor shall convene the county canvassing board to process the absentee ballots and canvass the votes cast at that primary or election.))~~ At least every third day after a special election, primary, or general election and before certification of the election results, except Sundays and legal holidays, the county auditor shall convene the county canvassing board or their designees to process absentee ballots and canvass the votes cast at that special election, primary, or general election, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor may use his or her discretion in determining when to convene the canvassing board or their designees during the final four days before the certification of election results in order to protect the secrecy of any ballot.

Each absentee ballot previously not canvassed that was received by the county auditor two days or more before the convening of the canvassing board or their designees and that either was received by the county auditor before the closing of the polls on the day of the special election, primary, or general election for which it was issued, or that bears a date of mailing on or before the special election, primary, or general election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass.

(2) On the tenth day after a special election or a primary and on the fifteenth day after a general election, the canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a date of mailing on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, shall be included in the canvass report.

~~((2))~~ (3) At the request of any caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative

primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house.

Passed the Senate April 24, 1999.

Passed the House April 24, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 260

[Senate Bill 5643]

VOTERS' PAMPHLETS

AN ACT Relating to the state voters' pamphlet; adding new sections to chapter 29.81 RCW; and repealing RCW 29.80.010, 29.80.020, 29.80.030, 29.80.040, 29.80.050, 29.80.060, 29.80.070, 29.80.080, 29.80.090, 29.81.010, 29.81.011, 29.81.012, 29.81.014, 29.81.020, 29.81.030, 29.81.040, 29.81.042, 29.81.043, 29.81.050, 29.81.052, 29.81.053, 29.81.060, 29.81.070, 29.81.080, 29.81.090, 29.81.100, 29.81.110, 29.81.120, 29.81.130, 29.81.140, 29.81.150, 29.81.160, and 29.81.180.

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

NEW SECTION. Sec. 1. The secretary of state shall, whenever at least one state-wide measure or office is scheduled to appear on the general election ballot, print and distribute a voters' pamphlet.

The secretary of state shall distribute the voters' pamphlet to each household in the state, to public libraries, and to any other locations he or she deems appropriate. The secretary of state shall also produce taped or Braille transcripts of the voters' pamphlet, publicize their availability, and mail without charge a copy to any person who requests one.

The secretary of state may make the material required to be distributed by this chapter available to the public in electronic form. The secretary of state may provide the material in electronic form to computer bulletin boards, print and broadcast news media, community computer networks, and similar services at the cost of reproduction or transmission of the data.

NEW SECTION. Sec. 2. The voters' pamphlet must contain:

(1) Information about each ballot measure initiated by or referred to the voters for their approval or rejection as required by section 5 of this act;

(2) In even-numbered years, statements, if submitted, advocating the candidacies of nominees for the office of president and vice-president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit a campaign mailing address and telephone number and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon state-wide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) In even-numbered years, a section explaining how voters may participate in the election campaign process; the address and telephone number of the public disclosure commission established under RCW 42.17.350; and a summary of the disclosure requirements that apply when contributions are made to candidates and political committees;

(5) In even-numbered years the name, address, and telephone number of each political party with nominees listed in the pamphlet, if filed with the secretary of state by the state committee of a major political party or the presiding officer of the convention of a minor political party;

(6) In each odd-numbered year immediately before a year in which a president of the United States is to be nominated and elected, information explaining the precinct caucus and convention process used by each major political party to elect delegates to its national presidential candidate nominating convention. The pamphlet must also provide a description of the statutory procedures by which minor political parties are formed and the statutory methods used by the parties to nominate candidates for president;

(7) In even-numbered years, a description of the office of precinct committee officer and its duties;

(8) An application form for an absentee ballot;

(9) A brief statement explaining the deletion and addition of language for proposed measures under section 6 of this act;

(10) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters.

NEW SECTION. Sec. 3. (1) Explanatory statements prepared by the attorney general under section 5 (3) and (4) of this act must be written in clear and concise language, avoiding legal and technical terms when possible, and filed with the secretary of state.

(2) When the explanatory statement for a measure initiated by petition is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the person proposing the measure and any others who have made written request for notification of the exact language of the explanatory statement. When the explanatory statement for a measure referred to the ballot by the legislature is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the presiding officer of the senate and the presiding officer of the house of representatives and any others who have made written request for notification of the exact language of the explanatory statement.

(3) A person dissatisfied with the explanatory statement may appeal to the superior court of Thurston County within five days of the filing date. A copy of the petition and a notice of the appeal must be served on the secretary of state and

the attorney general. The court shall examine the measure, the explanatory statement, and objections, and may hear arguments. The court shall render its decision and certify to and file with the secretary of state an explanatory statement it determines will meet the requirements of this chapter.

The decision of the superior court is final, and its explanatory statement is the established explanatory statement. The appeal must be heard without costs to either party.

NEW SECTION. Sec. 4. Committees shall write and submit arguments advocating the approval or rejection of each state-wide ballot issue and rebuttals of those arguments. The secretary of state, the presiding officer of the senate, and the presiding officer of the house of representatives shall appoint the initial two members of each committee. In making these committee appointments the secretary of state and presiding officers of the senate and house of representatives shall consider legislators, sponsors of initiatives and referendums, and other interested groups known to advocate or oppose the ballot measure.

The initial two members may select up to four additional members, and the committee shall elect a chairperson. The remaining committee member or members may fill vacancies through appointment.

After the committee submits its initial argument statements to the secretary of state, the secretary of state shall transmit the statements to the opposite committee. The opposite committee may then prepare rebuttal arguments. Rebuttals may not interject new points.

The voters' pamphlet may contain only argument statements prepared according to this section. Arguments may contain graphs and charts supported by factual statistical data and pictures or other illustrations. Cartoons or caricatures are not permitted.

NEW SECTION. Sec. 5. The secretary of state shall determine the format and layout of the voters' pamphlet. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Federal and state offices must appear in the pamphlet in the same sequence as they appear on the ballot. Measures and arguments must be printed in the order specified by RCW 29.79.300.

The voters' pamphlet must provide the following information for each state-wide issue on the ballot:

- (1) The legal identification of the measure by serial designation or number;
- (2) The official ballot title of the measure;
- (3) A statement prepared by the attorney general explaining the law as it presently exists;
- (4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;
- (5) The total number of votes cast for and against the measure in the senate and house of representatives, if the measure has been passed by the legislature;

(6) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;

(7) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;

(8) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;

(9) The full text of each measure.

NEW SECTION. Sec. 6. State-wide ballot measures that amend existing law must be printed in the voters' pamphlet so that language proposed for deletion is enclosed by double parentheses and has a line through it. Proposed new language must be underlined. A statement explaining the deletion and addition of language must appear as follows: "Any language in double parentheses with a line through it is existing state law and will be taken out of the law if this measure is approved by voters. Any underlined language does not appear in current state law but will be added to the law if this measure is approved by voters."

NEW SECTION. Sec. 7. The secretary of state shall adopt rules setting deadlines for submitting candidate statements, candidate photographs, arguments, rebuttals, and explanatory statements. The secretary of state shall also adopt rules setting deadlines for filing ballot titles for referendum bills or constitutional amendments if none have been provided by the legislature.

NEW SECTION. Sec. 8. (1) If in the opinion of the secretary of state any argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate contains obscene matter or matter that is otherwise prohibited by law from distribution through the mail, the secretary may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the matter. The court shall not enter such an order unless it concludes that the matter is obscene or otherwise prohibited for distribution through the mail.

(2)(a) A person who believes that he or she may be defamed by an argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the defamatory statement.

(b) The court shall not enter such an order unless it concludes that the statement is untrue and that the petitioner has a very substantial likelihood of prevailing in a defamation action.

(c) An action under this subsection (2) must be filed and served no later than the tenth day after the deadline for the submission of the argument or statement to the secretary of state.

(d) If the secretary of state notifies a person named or identified in an argument or statement of the contents of the argument or statement within three days after the deadline for submission to the secretary, then neither the state nor the

secretary is liable for damages resulting from publication of the argument or statement unless the secretary publishes the argument or statement in violation of an order entered under this section. Nothing in this section creates a duty on the part of the secretary of state to identify, locate, or notify the person.

(3) Parties to a dispute under this section may agree to resolve the dispute by rephrasing the argument or statement, even if the deadline for submission to the secretary has elapsed, unless the secretary determines that the process of publication is too far advanced to permit the change. The secretary shall promptly provide any such revision to any committee entitled to submit a rebuttal argument. If that committee has not yet submitted its rebuttal, its deadline to submit a rebuttal is extended by five days. If it has submitted a rebuttal, it may revise it to address the change within five days of the filing of the revised argument with the secretary.

(4) In an action under this section the committee or candidate must be named as a defendant, and may be served with process by certified mail directed to the address contained in the secretary's records for that party. The secretary of state shall be a nominal party to an action brought under subsection (2) of this section, solely for the purpose of determining the content of the voters' pamphlet. The superior court shall give such an action priority on its calendar.

NEW SECTION. Sec. 9. (1) An argument or statement submitted to the secretary of state for publication in the voters' pamphlet is not available for public inspection or copying until:

(a) In the case of candidate statements, (i) all statements by all candidates who have filed for a particular office have been received, except those who informed the secretary that they will not submit statements, or (ii) the deadline for submission of statements has elapsed;

(b) In the case of arguments supporting or opposing a measure, (i) the arguments on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed; and

(c) In the case of rebuttal arguments, (i) the rebuttals on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed.

(2) Nothing in this section prohibits the secretary from releasing information under section 8(2)(d) of this act.

NEW SECTION. Sec. 10. All photographs of candidates submitted for publication must conform to standards established by the secretary of state by rule. No photograph may reveal clothing or insignia suggesting the holding of a public office.

NEW SECTION. Sec. 11. (1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice-president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under section 3 of this act may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office.

NEW SECTION. Sec. 12. The secretary of state, as chief election officer, shall adopt rules consistent with this chapter to facilitate and clarify procedures related to the voters' pamphlet.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

- (1) RCW 29.80.010 and 1987 c 295 s 17, 1984 c 54 s 1, 1977 ex.s. c 361 s 106, 1975-'76 2nd ex.s. c 4 s 2, 1973 c 4 s 8, & 1965 c 9 s 29.80.010;
- (2) RCW 29.80.020 and 1984 c 54 s 2, 1971 ex.s. c 145 s 1, 1971 c 81 s 78, & 1965 c 9 s 29.80.020;
- (3) RCW 29.80.030 and 1979 ex.s. c 57 s 4 & 1965 c 9 s 29.80.030;
- (4) RCW 29.80.040 and 1984 c 54 s 3, 1971 ex.s. c 145 s 2, & 1965 c 9 s 29.80.040;
- (5) RCW 29.80.050 and 1971 ex.s. c 145 s 3 & 1965 c 9 s 29.80.050;
- (6) RCW 29.80.060 and 1965 c 9 s 29.80.060;
- (7) RCW 29.80.070 and 1965 c 9 s 29.80.070;
- (8) RCW 29.80.080 and 1981 c 243 s 1;
- (9) RCW 29.80.090 and 1984 c 54 s 7;
- (10) RCW 29.81.010 and 1984 c 54 s 4, 1973 1st ex.s. c 143 s 1, & 1965 c 9 s 29.81.010;
- (11) RCW 29.81.011 and 1984 c 54 s 5;
- (12) RCW 29.81.012 and 1984 c 54 s 6 & 1969 ex.s. c 72 s 1;
- (13) RCW 29.81.014 and 1977 c 56 s 1;
- (14) RCW 29.81.020 and 1973 1st ex.s. c 143 s 2 & 1965 c 9 s 29.81.020;
- (15) RCW 29.81.030 and 1973 1st ex.s. c 143 s 3 & 1965 c 9 s 29.81.030;
- (16) RCW 29.81.040 and 1973 1st ex.s. c 143 s 4, 1971 ex.s. c 145 s 4, & 1965 c 9 s 29.81.040;
- (17) RCW 29.81.042 and 1973 1st ex.s. c 143 s 6;
- (18) RCW 29.81.043 and 1973 1st ex.s. c 143 s 7;
- (19) RCW 29.81.050 and 1973 1st ex.s. c 143 s 5 & 1965 c 9 s 29.81.050;
- (20) RCW 29.81.052 and 1973 1st ex.s. c 143 s 8;
- (21) RCW 29.81.053 and 1973 1st ex.s. c 143 s 9;
- (22) RCW 29.81.060 and 1965 c 9 s 29.81.060;
- (23) RCW 29.81.070 and 1965 c 9 s 29.81.070;
- (24) RCW 29.81.080 and 1965 c 9 s 29.81.080;
- (25) RCW 29.81.090 and 1979 ex.s. c 57 s 5 & 1965 c 9 s 29.81.090;
- (26) RCW 29.81.100 and 1973 c 4 s 9, 1971 ex.s. c 145 s 5, & 1965 c 9 s 29.81.100;

- (27) RCW 29.81.110 and 1965 c 9 s 29.81.110;
- (28) RCW 29.81.120 and 1971 ex.s. c 145 s 6 & 1965 c 9 s 29.81.120;
- (29) RCW 29.81.130 and 1965 c 9 s 29.81.130;
- (30) RCW 29.81.140 and 1971 ex.s. c 145 s 7 & 1965 c 9 s 29.81.140;
- (31) RCW 29.81.150 and 1965 c 9 s 29.81.150;
- (32) RCW 29.81.160 and 1965 c 9 s 29.81.160; and
- (33) RCW 29.81.180 and 1981 c 243 s 2.

NEW SECTION. Sec. 14. Sections 1 through 12 of this act are added to chapter 29.81 RCW.

Passed the Senate April 21, 1999.

Passed the House April 7, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 261

[Senate Bill 5731]

MUNICIPAL OFFICERS' INTEREST IN CONTRACTS

AN ACT Relating to municipal officers' interest in contracts; amending RCW 42.23.030, 42.23.040, 42.23.050, and 42.23.060; 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:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest.

Sec. 2. RCW 42.23.030 and 1997 c 98 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 depositories 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))~~ two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first class school district;

(6)(a) ~~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 with a population of ten thousand or more, or an irrigation district encompassing in excess of fifty thousand acres: PROVIDED, That) in which~~ 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))~~ amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed ((seven)) one thousand five hundred ((fifty)) dollars in any calendar month((:-PROVIDED FURTHER, That)).

(b) However, in the case of a particular officer of a 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))~~ amount of such contract or contracts authorized in this subsection (6) may exceed ~~((seven))~~ one thousand five hundred ((fifty)) dollars in any calendar month but shall not exceed ~~((nine))~~ eighteen thousand dollars in any calendar year ~~((:-PROVIDED FURTHER, That there shall be public disclosure by having an available)).~~

(c) The exceptions provided in this subsection (6) do not apply to a sale or lease by the municipality as the seller or lessor. The exceptions provided in this subsection (6) also do not apply to the letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres.

(d) The municipality shall maintain a list of ~~((such purchases or))~~ all contracts~~((, and if the supplier or contractor is an official of the municipality, he or she shall not vote on the authorization: PROVIDED FURTHER, That in the case of a first class school district, there shall be notice of the proposed contract by publication given in one or more newspapers of general circulation within the district))~~ that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(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))~~ and 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. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second class school district~~((: PROVIDED, That))~~ if the terms of such contract ((shall be)) are 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)),~~ This exception applies only if the terms of ((such)) the contract ((shall be)) are 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))~~ and the terms of ((such)) the contract ((shall be)) are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(11) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; ~~((and))~~ and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

Sec. 3. RCW 42.23.040 and 1961 c 268 s 5 are each amended to read as follows:

A municipal officer ~~((shall))~~ is not ~~((be deemed to be))~~ interested in a contract, within the meaning of RCW 42.23.030, if ~~((he))~~ the officer has only a remote interest in the contract and ~~((if))~~ the ~~((fact and))~~ extent of ~~((such))~~ the interest is disclosed to the governing body of the municipality of which ~~((he))~~ the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:

- (1) That of a nonsalaried officer of a nonprofit corporation;
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- (3) That of a landlord or tenant of a contracting party;
- (4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section ~~((shall be))~~ are applicable to any officer interested in a contract, ~~((though his))~~ even if the officer's interest ~~((he))~~ is only remote, ~~((who))~~ if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.

Sec. 4. RCW 42.23.050 and 1961 c 268 s 6 are each amended to read as follows:

Any contract made in violation of the provisions of this ~~((act shall be))~~ chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this ~~((act shall be))~~ chapter is liable to the municipality of which he

or she is an officer for a penalty in the amount of ~~((three))~~ five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon ~~((him))~~ the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this ~~((act shall work a))~~ chapter may be grounds for forfeiture of his or her office.

Sec. 5. RCW 42.23.060 and 1961 c 268 s 16 are each amended to read as follows:

If any provision of this ~~((act))~~ chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the ~~((city))~~ charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

Passed the Senate April 21, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 262

[Engrossed Substitute Senate Bill 5803]

DAIRY NUTRIENT MANAGEMENT TASK FORCE

- AN ACT Relating to dairy nutrients; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The legislature finds that a number of issues have arisen in regard to the dairy nutrient management program that have not been settled without direct legislative involvement. The legislature finds that continued cooperation is needed to resolve issues relating to the dairy nutrient management program.

The legislature intends to further the goal of establishing a reasonable and effective program that provides clear and consistent expectations. The legislature finds that retention of productive dairy farms and maintaining the quality of state waters are of utmost importance to the state.

NEW SECTION. **Sec. 2.** By January 30, 2000, the department of ecology shall publish and send an informational guide to all registered dairy farms in the state that explains the expectations of the department when conducting an inspection. The guide shall be titled "How to Survive a Dairy Nutrient Inspection."

NEW SECTION. **Sec. 3.** (1) A dairy nutrient management task force is created. The task force shall be comprised of eleven members, who are appointed as follows:

(a) Two members of the house of representatives, one from each major caucus, appointed by the co-speakers of the house of representatives;

(b) Two members of the senate, one from each major caucus, appointed by the president of the senate;

(c) A representative of the department of ecology, appointed by the director of ecology;

(d) A representative of the state conservation commission, appointed by its executive secretary;

(e) A representative of local conservation districts, appointed by the president of a state-wide association of conservation districts;

(f) Three active dairy farmers, appointed by a state-wide organization representing dairy farmers in the state, who shall be from different regions and different sizes of dairy operations; and

(g) A representative of an environmental interest organization with familiarity and expertise in water quality issues, appointed by agreement of the co-speakers of the house of representatives and the president of the senate.

(2) The task force shall conduct a review of the dairy nutrient management program administered by the department of ecology, the conservation commission, and local conservation districts. The task force shall include but not be limited to examination of the following topics:

(a) Compliance with the deadlines established in chapter 262, Laws of 1998, for the development, implementation, and approval of dairy nutrient management plans, or deadlines established under other state water quality laws;

(b) Better assurance of consistency in interpretations between staff that conduct inspections, and between inspectors and staff that design and approve dairy nutrient management plans;

(c) What constitutes waters of the state for purposes of the dairy nutrient management program;

(d) Clarification of what constitutes a violation, including a review of the federal environmental protection agency guidance manual, and whether there must be an actual discharge and/or exceedance of state water quality standards;

(e) Clarification as to the circumstances under which dairy operations are responsible to control flood waters arising from outside of the dairy operation to prevent mixing with dairy nutrients including flood waters that arise during major flood events;

(f) Clarification of the criteria applicable to dairy operations as to what constitutes a potential to pollute under RCW 90.48.120;

(g) A review of materials provided by state agencies to dairy farmers regarding dairy nutrient management inspections;

(h) Review changes in any standards utilized in the development and approval of dairy nutrient management plans; and

(i) The adequacy of funding to implement the dairy nutrient management program.

(3) By December 10, 1999, the task force shall:

(a) Provide recommendations to the department of ecology, to the conservation commission, and to local conservation districts for improvements in the implementation of the dairy nutrient management program; and

(b) Provide recommendations to the legislature on statutory changes to clarify and improve the operation of various facets of the program.

(4) The task force shall convene as soon as possible upon appointment of its members. The task force shall elect a chair and adopt rules for conducting the business of the task force. Staff support for the task force shall be provided by the department of ecology.

(5) This section expires December 31, 1999.

Passed the Senate April 21, 1999.

Passed the House April 8, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 263

[Second Substitute Senate Bill 5821]

ON-SITE WASTEWATER TREATMENT SYSTEMS—DESIGNER LICENSING

AN ACT Relating to professional designers of on-site wastewater treatment systems; adding a new section to chapter 70.118 RCW; adding a new chapter to Title 18 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1. PURPOSE—PROHIBITION.** (1) In order to safeguard life, health, and property and to promote the public welfare, the legislature finds that it is in the public interest to permit the limited practice of engineering by qualified individuals who are not registered as professional engineers under chapter 18.43 RCW. The increased complexity of on-site wastewater treatment systems, changes in treatment technology, and the need to protect ground water and watershed areas make it essential that qualified professionals design the systems. Furthermore, the legislature finds that individuals who have been authorized by local health jurisdictions to design on-site wastewater treatment systems have performed these designs in the past. However, it is desirable to establish a state-wide licensing program to create uniform application of design practices, standards for designs, individual qualifications, and consistent enforcement efforts applicable to all persons who design on-site wastewater treatment systems, including persons licensed to practice as professional engineers under chapter 18.43 RCW. It is further desirable to establish a certification program applicable to all persons who inspect or approve on-site wastewater treatment systems on behalf of a local health jurisdiction.

(2) It is unlawful for any individual to practice or offer to practice the design of on-site wastewater treatment systems unless licensed in accordance with this chapter or licensed as a professional engineer under chapter 18.43 RCW.

NEW SECTION. **Sec. 2. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means a group of individuals with broad knowledge and experience in the design, construction, and regulation of on-site wastewater treatment systems, appointed under this chapter to offer recommendations to the board and the director on the administration of the program established under this chapter.

(2) "Board" means the board of registration for professional engineers and land surveyors as defined in chapter 18.43 RCW.

(3) "Designer," "licensee," or "permit holder" means an individual authorized under this chapter to perform design services for on-site wastewater treatment systems.

(4) "Director" means the director of the Washington state department of licensing.

(5) "Engineer" means a professional engineer licensed under chapter 18.43 RCW.

(6) "Practice of engineering" has the meaning set forth in RCW 18.43.020(5).

(7) "On-site wastewater treatment system" means an integrated system of components that: Convey, store, treat, and/or provide subsurface soil treatment and disposal of wastewater effluent on the property where it originates or on adjacent or other property and includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas, for on-site wastewater treatment under three thousand five hundred gallons per day when not connected to a public sewer system.

(8) "On-site wastewater design" means the development of plans, details, specifications, instructions, or inspections by application of specialized knowledge in analysis of soils, on-site wastewater treatment systems, disposal methods, and technologies to create an integrated system of collection, transport, distribution, treatment, and disposal of on-site wastewater.

(9) "Local health jurisdiction" or "jurisdictional health department" means an administrative agency created under chapter 70.05, 70.08, or 70.46 RCW, that administers the regulation and codes regarding on-site wastewater treatment systems.

(10) "Practice permit" means an authorization to practice granted to an individual who designs on-site wastewater treatment systems and who has been authorized by a local health jurisdiction to practice on or before July 1, 2000.

(11) "License" means a license to design on-site wastewater treatment systems under this chapter.

(12) "Certificate of competency" means a certificate issued to employees of local health jurisdictions indicating that the certificate holder has passed the licensing examination required under this chapter.

NEW SECTION. **Sec. 3. UNPROFESSIONAL CONDUCT.** (1) The following conduct, acts, and conditions constitute unprofessional conduct for any person issued, or applying for, a practice permit or license under this chapter:

(a) Any act involving moral turpitude, dishonesty, or corruption relating to the practice of on-site wastewater treatment designs or inspections, whether or not the act constitutes a crime;

(b) Misrepresentation or concealment of a material fact in applying for, obtaining, or reinstating a practice permit or license;

(c) Any advertising which is false, fraudulent, or misleading;

(d) Incompetence, gross negligence, or malpractice that results in injury to an individual, damage to property, or adverse impact on the environment;

(e) As determined by the board, failure to provide to the board in a timely manner any lawfully requested information or documentation regarding a pending application, license renewal application, or administrative proceeding;

(f) Failure to comply with an order issued or approved by the board;

(g) Aiding or abetting a person in engaging in practice without a required practice permit or license;

(h) Practicing beyond the scope of practice as defined by law or rule;

(i) Misrepresentation or fraud in any aspect of the conduct of the business or profession of designing on-site wastewater treatment systems;

(j) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(k) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the board or its authorized representative, or by the use of threats or harassment against any person who may serve as a witness in any adjudicative proceeding before the board;

(l) Practicing with a practice permit or license issued under this chapter that is expired, suspended, or revoked;

(m) Being willfully untruthful or deceptive in any document, report, statement, testimony, or plan that pertains to the design or construction of an on-site wastewater treatment system;

(n) Submission of a design or as-built record to a local health jurisdiction, to the department of health, or to the department of ecology, that is knowingly based upon false, incorrect, misleading, or fabricated information; and

(o) Any act or omission that is contrary to the standard of practice for individuals authorized to practice under this chapter.

(2) If an act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction, however, the judgment and sentence is conclusive evidence, at the ensuing disciplinary hearing, of guilt of the crime described in the complaint, indictment, or information, and of violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the

basis for the conviction and in all proceedings in which the sentence has been deferred or suspended.

NEW SECTION. Sec. 4. DISCIPLINE. (1) The board, upon finding a violation of this chapter, has the exclusive power to:

- (a) Reprimand an applicant, licensee, or practice permit holder;
- (b) Suspend, revoke, or refuse to renew a license or practice permit;
- (c) Deny an application for a practice permit or license; and
- (d) Impose any monetary penalty not exceeding one thousand dollars for each violation upon an applicant, licensee, or permit holder.

(2) Any person may file with the board a complaint alleging violation of this chapter. All complaints alleging violation of this chapter must be in writing and sworn to by the person making the allegation.

(3) All procedures related to hearings on any complaint alleging violations of this chapter must comply with provisions governing adjudicative proceedings as set forth in chapter 34.05 RCW, the administrative procedure act.

(4) The board shall immediately suspend the license or practice permit of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the child support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a license under this subsection, and satisfies the requirements of RCW 34.05.422.

NEW SECTION. Sec. 5. ADVISORY COMMITTEE. (1) There is created an advisory committee, which shall provide recommendations to the board and the director concerning the implementation of this chapter. The advisory committee shall consist of five members who are conversant with and experienced in the design, inspection, construction, and/or maintenance of on-site wastewater treatment systems, and who are otherwise eligible for licensure under this chapter. Each member of the committee must be a resident of the state and must have a minimum of seven years of continuous experience with on-site wastewater treatment systems immediately prior to appointment.

(2) The director shall appoint to the committee individuals from across the state, thus utilizing geographic and experiential diversity as much as possible. The terms of the members of the advisory committee shall be a maximum of three years, except that the initial appointees to the committee shall serve the following terms: Two members for two years and three members for three years. No member of the advisory committee is eligible for reappointment to a third consecutive term, but any member is eligible for reappointment after an absence of at least one year from the committee. Any member who is reappointed

following an absence of at least one year from the committee is eligible for reappointment to a second consecutive term and is again eligible for reappointment after an absence of at least one year from the committee.

(3) Members of the advisory committee shall serve until replaced by a subsequent appointment, but may resign prior to completing the term of appointment. The director may for just cause remove a committee member. The director shall appoint a new member to fill any vacancy on the advisory committee for the remainder of the unexpired term. Members of the advisory committee shall not be compensated, but shall be reimbursed for expenses incurred in accordance with RCW 43.03.050 and 43.03.060. Three members constitutes a quorum.

(4) At the request of the advisory committee, the director may appoint temporary additional members to the advisory committee for assistance with rule development, examination development, and technical advice on complaints. Members temporarily appointed must meet the same minimum qualifications as regular members of the advisory committee. Temporary members have all the powers, duties, and immunities of regular members of the advisory committee and shall be reimbursed for expenses incurred in accordance with RCW 43.03.050 and 43.03.060. The director shall limit the term of temporary members to one year, but may for just cause extend the original appointment up to one additional year.

NEW SECTION. Sec. 6. DIRECTOR'S AUTHORITY. The director may:

(1) Appoint and reappoint members to the advisory committee, including temporary additional members, and remove committee members for just cause;

(2) Employ administrative, clerical, and investigative staff as necessary to administer and enforce this chapter;

(3) Establish fees for applications, examinations, and renewals in accordance with chapter 43.24 RCW;

(4) Issue practice permits and licenses to applicants who meet the requirements of this chapter; and

(5) Exercise rule-making authority to implement this section.

NEW SECTION. Sec. 7. BOARD—AUTHORITY—DUTIES. (1) The board may:

(a) Adopt rules to implement this chapter including, but not limited to, evaluation of experience, examinations, and scope and standards of practice;

(b) Administer licensing examinations;

(c) Review and approve or deny initial and renewal license applications;

(d) Conduct investigations of complaints alleging violations of this chapter;

(e) Conduct adjudicative proceedings in accordance with the administrative procedure act, chapter 34.05 RCW;

(f) Issue investigative subpoenas to compel the production of records, maps, and other documents, as may be related to the investigation of violations of this chapter; and

(g) Take disciplinary action as provided for in RCW 18.43.110 and 18.43.120.

(2) The board shall consider recommendations of the advisory committee made in accordance with this chapter.

NEW SECTION. Sec. 8. ADVISORY COMMITTEE—AUTHORITY. The advisory committee shall make recommendations to the board regarding:

(1) Development and adoption of rules to implement this chapter including, but not limited to, evaluation of experience, examinations, and scope and standards of practice;

(2) Development of the material content of examinations for licensure or for a certificate of competency under this chapter;

(3) Review of complaints and investigations pertaining to the practice of the design of on-site wastewater treatment systems; and

(4) Any other duties deemed necessary by the director or the board.

NEW SECTION. Sec. 9. IMMUNITY. The director, members of the board, and individuals acting on behalf of the director are immune to liability in any civil action or criminal case based on any acts performed in the course of their duties under this chapter, except for acts displaying intentional or willful misconduct.

NEW SECTION. Sec. 10. PRACTICE PERMITS—LICENSE. (1) On July 1, 2000, any person who is authorized by a local health jurisdiction to prepare on-site wastewater treatment system designs in the state of Washington is eligible for a practice permit under this chapter. On or after July 1, 2000, any individual wishing to obtain a practice permit must make application to the board and pay the fee established by the director. A practice permit enables the permit holder to practice on-site design services only within local health jurisdictions where the permit holder had authorization to practice as of July 1, 2000.

(2) A practice permit is renewable annually upon payment of the fee established by the director. All practice permits issued under this chapter expire June 30, 2003.

(3) Any person who practices or offers to practice the design of on-site wastewater treatment systems must obtain a license under this chapter by July 1, 2003. A license issued under this chapter enables the licensee to perform design services for on-site wastewater treatment systems in all counties in the state. A person wishing to obtain a license to practice the design of on-site wastewater treatment systems may obtain the license by one of the methods described in this chapter. Beginning on July 1, 2001, the board will accept applications for the license.

(4) On July 1, 2000, all programs administered by local health jurisdictions that license or otherwise authorize the practice of on-site wastewater treatment systems designs must discontinue. On or after July 1, 2000, each person practicing on-site design services in the state of Washington must hold a practice permit or a license described in this chapter.

(5) Local health jurisdictions, the department of health, and the department of ecology retain authority: (a) To administer local regulations and codes for

approval or disapproval of designs for on-site wastewater treatment systems; (b) to issue permits for construction; (c) to evaluate soils and site conditions for compliance with code requirements; and (d) to perform on-site wastewater treatment design work as authorized in state and local board of health rules.

NEW SECTION. Sec. 11. APPLICANTS VIA WRITTEN EXAMINATION—EXPERIENCE REQUIREMENTS. All applicants for licensure under this chapter, except as provided in section 19 of this act, must pass a written examination administered by the board and must also meet the following minimum requirements:

- (1) A high school diploma or equivalent; and
- (2) A minimum of four years of experience, as approved by the board, showing increased responsibility for the design of on-site wastewater treatment systems. The experience must include, but is not limited to, site soil assessment, hydraulics, topographic delineations, use of specialized treatment processes and devices, microbiology, and construction practices. Completion of two years of college level course work in subjects dealing with, but not limited to, soils, hydraulics, topographic delineations, construction practices, and/or microbiology or completion of a two-year curriculum in on-site treatment systems, technology, and applications, as approved by the board, may be substituted for up to two years of the experience requirement.

NEW SECTION. Sec. 12. EXPERIENCE FROM OUTSIDE STATE. Experience in on-site design, inspection, and/or construction activities acquired outside the state of Washington may satisfy the experience requirements under this chapter. The board shall consider the experience according to the level of complexity of the design work and evidence that the experience shows increased responsibility over designs. The experience may be considered only to the extent that it can be independently verified by the board.

NEW SECTION. Sec. 13. APPLICATION—REFERENCES—FEES. (1) Application for licensure must be on forms prescribed by the board and furnished by the director. The application must contain statements, made under oath, demonstrating the applicant's education and work experience.

(2) Applicants shall provide not less than two verifications of experience from licensed professional engineers, on-site wastewater treatment system designers licensed under this chapter, or state/local regulatory officials in the on-site wastewater treatment field who have direct knowledge of the applicant's qualifications to practice in accordance with this chapter and who verify the applicant's work experience.

(3) The director, as provided in RCW 43.24.086, shall determine an application fee for licensure as an on-site wastewater treatment system designer. A nonrefundable application fee must accompany the application. The director shall ensure that the application fee includes the cost of the examination and the cost issuance of a license and certificate. A candidate who fails an examination

may apply for reexamination. The director shall determine the fee for reexamination.

NEW SECTION. Sec. 14. ISSUANCE OF LICENSE—SEAL. (1) The director shall issue a license to any applicant who meets the requirements of this chapter. The issuance of a license by the director is evidence that the person named is entitled to the rights and privileges of a licensed on-site wastewater treatment system designer as long as the license remains valid.

(2) Each person licensed under this chapter shall obtain an inking stamp, of a design authorized by the board, that contains the licensee's name and license number. Plans, specifications, and reports prepared by the registrant must be signed, dated, and stamped. Signature and stamping constitute certification by the licensee that a plan, specification, or report was prepared by or under the direct supervision of a licensee.

(3) Those persons who obtain a certificate of competency as provided in chapter 70.118 RCW do not have the privileges granted to a license holder under this chapter and do not have authority to obtain and use a stamp as described in this section.

NEW SECTION. Sec. 15. RENEWAL—PENALTY FEE. (1) Practice permits and licenses issued under this chapter are valid for one year and may be renewed under the conditions described in this chapter. An expired practice permit or license is invalid and must be renewed before lawful practice can resume. Any permit holder or licensee who fails to pay the renewal fee within ninety days following the date of expiration shall be assessed a penalty fee as determined by the director and must pay the penalty fee and the base renewal fee before the practice permit or license may be returned to a valid status.

(2) Any license or practice permit issued under this chapter that is not renewed within two years of its date of expiration must be canceled. Following cancellation, a person seeking to renew must reapply as a new applicant under this chapter.

(3) The director, in conformance with RCW 43.24.140, may modify the duration of the license. The director, as provided in RCW 43.24.086, shall determine the fee for applications and for renewals of practice permits and licenses issued under this chapter.

NEW SECTION. Sec. 16. PERSONS EXEMPT FROM LICENSURE. A person engaged in any of the following activities is not required to be licensed in accordance with this chapter:

(1) A licensed professional engineer, as provided in chapter 18.43 RCW, if the professional engineer performs the design work in accordance with this chapter and rules adopted under this chapter; or

(2) An employee or a subordinate of a person licensed under chapter 18.43 RCW as a professional engineer, or a person licensed under this chapter if the work

is performed under the direct supervision of the engineer or licensee and does not include final design decisions.

NEW SECTION. Sec. 17. UNLICENSED PRACTICE—PENALTY. (1) On or after July 1, 2003, it is a gross misdemeanor for any person, not otherwise exempt from the requirements of this chapter, to: (a) Perform on-site wastewater treatment systems design services without a license; (b) purport to be qualified to perform those services without having been issued a standard license under this chapter; (c) attempt to use the license or seal of another; (d) attempt to use a revoked or suspended license; or (e) attempt to use false or fraudulent credentials.

(2) The board may exercise its authority under RCW 18.43.120 in dealing with persons described in subsection (1) of this section.

NEW SECTION. Sec. 18. CONTINUING COMPETENCY. The board shall require licensees and holders of certificates of competency under this chapter to obtain continuing professional development or continuing education. The board may also require these licensees and certificate holders to demonstrate maintenance of knowledge and skills as a condition of license or certificate renewal, including peer review of work products and periodic reexamination.

NEW SECTION. Sec. 19. COMITY. Any person holding a license issued by a jurisdiction outside the state of Washington authorizing that person to perform design services for the construction of on-site wastewater treatment systems may be granted a license without examination under this chapter, if:

(1) The education, experience, and/or examination forming the basis of the license is determined by the board to be equal to or greater than the conditions for the issuance of a license under this chapter; and

(2) The individual has paid the applicable fee and has submitted the necessary application form.

NEW SECTION. Sec. 20. LOCAL HEALTH JURISDICTIONS—CERTIFICATE OF COMPETENCY. (1) Employees of local health jurisdictions who review, inspect, or approve the design and construction of on-site wastewater treatment systems shall obtain a certificate of competency by obtaining a passing score on the written examination administered for licensure under this chapter. Eligibility to apply for the certificate of competency is based upon a written request from the local health director or designee and payment of a fee established by the director. Applications for a certificate of competency may not be accepted until on or after July 1, 2000. The certificate of competency is renewable upon payment of a fee established by the director.

(2) Issuance of the certificate of competency does not authorize the certificate holder to offer or provide on-site wastewater treatment system design services. However, nothing in this chapter limits or affects the ability of local health jurisdictions to perform on-site design services under their authority in chapter 70.05 RCW.

NEW SECTION. Sec. 21. OPERATING ACCOUNT ESTABLISHED. (1) All fees and fines collected under this chapter shall be paid into the professional engineers' account established under RCW 18.43.150. Moneys in the account may be spent only after appropriation and must be used to carry out all the purposes and provisions of this chapter and chapter 18.43 RCW, including the cost of administering this chapter.

(2) The director shall biennially prepare a budget request based on the anticipated cost of administering licensing and certification activities. The budget request shall include the estimated income from fees contained in this chapter.

NEW SECTION. Sec. 22. A new section is added to chapter 70.118 RCW to read as follows:

(1) The local board of health shall ensure that individuals who conduct inspections of on-site wastewater treatment systems or who otherwise conduct reviews of such systems are qualified in the technology and application of on-site sewage treatment principles. A certificate of competency issued by the department of licensing is adequate demonstration that an individual is competent in the engineering aspects of on-site wastewater treatment system technology.

(2) A local board of health may allow noncertified individuals to review designs of, and conduct inspections of, on-site wastewater treatment systems for a maximum of two years after the date of hire, if a certified individual reviews or supervises the work during that time.

NEW SECTION. Sec. 23. PROGRAM EVALUATION. (1) By July 1, 2005, the department of licensing and department of health shall convene a review committee to evaluate the licensing and certification programs established under this chapter.

(2) By July 1, 1999, the director shall convene a work group to study the financial assurance of on-site wastewater system practitioners through bonding, insurance, risk pools, or similar methods. The study of financial assurance requirements for on-site wastewater system practitioners shall include consideration of responsibility for the loss of value of structures or property should an installed on-site wastewater treatment system fail or be otherwise inoperable. The work group shall provide recommendations to the director by December 1, 1999, and the director shall forward those recommendations to the governor.

NEW SECTION. Sec. 24. CAPTIONS NOT LAW. Captions used in this chapter constitute no part of the law.

NEW SECTION. Sec. 25. Sections 1 through 21, 23, and 24 of this act constitute a new chapter in Title 18 RCW.

Passed the Senate April 22, 1999.

Passed the House April 13, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 264

[Substitute Senate Bill 5828]

GIFT OF LIFE AWARD

AN ACT Relating to the Washington gift of life award; amending RCW 1.50.005, 1.50.030, and 1.50.040; and repealing RCW 1.50.020.

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

Sec. 1. RCW 1.50.005 and 1998 c 59 s 1 are each amended to read as follows:

The legislature finds that persons who donate organs help save the lives and promote the well-being of others in a manner that demonstrates the noblest side of human nature. Many families and friends of both the donors and the donees may want to remember the special act of donation in a way that honors the memory of the donor and encourages donation by others in the future.

To recognize the special kindness of those who donate their organs, the legislature establishes the Washington gift of life ~~((medal))~~ award.

Sec. 2. RCW 1.50.030 and 1998 c 59 s 4 are each amended to read as follows:

~~((+))~~ The governor's office shall ~~((award a))~~ present the Washington gift of life ~~((medal))~~ award to ~~((a))~~ six eligible families or persons per year under the following ~~((conditions))~~:

~~((a))~~ (1) The organ procurement organization ~~((shall determine whether the))~~ may nominate the six individuals or persons ~~((requesting the medal is))~~ eligible under this section ~~((to receive the medal described in RCW 1.50.040))~~ to represent all those who have donated organs and ~~((shall))~~ may submit documentation supporting the eligibility of the individual or person to the governor's office. If more than one organ procurement organization is involved, they shall coordinate in harmony to designate by consensus the organ procurement organization among them to have primary administrative responsibility under this chapter.

~~((b))~~ (2) The governor's office shall ~~((award the medal and direct the primary organ procurement organization to arrange for the presentation to a family or person who requested a medal under this section and who has been determined by the organ procurement organization to be eligible to receive a medal under this section:~~

~~—(2)(a) Except as provided in (b) of this subsection and subsection (3) of this section,))~~ present the awards on an annual basis in coordination with the organ procurement organization. Only one ~~((medal))~~ award may be presented to the family of an organ donor.

~~((b) In the case of a family in which more than one member is an organ donor, the governor shall award and the primary organ procurement organization shall present an additional medal on behalf of each organ donor to his or her eligible family.~~

~~—(3)(a) Duplicate medals may be purchased by the family or person eligible to receive the medal. The price of the duplicate medal shall be sufficient to cover its cost.~~

~~—(b) Anyone not eligible to receive a medal under this chapter may request from the eligible family or person permission to purchase duplicate medals. The family's or person's decision to grant or withhold permission shall be in writing and shall be final. The family's or person's decision shall be honored by the governor.)~~

Sec. 3. RCW 1.50.040 and 1998 c 59 s 5 are each amended to read as follows:

The Washington gift of life (~~(medal shall be of bronze and)~~ award shall consist of the seal of the state of Washington (~~(, surrounded by a raised laurel wreath and suspended from a ring attached by a dark green ribbon. The reverse of the decoration within the raised laurel wreath shall)~~ and be inscribed with the words: "For the greatest act of kindness in donating organs to enhance the lives of others."

NEW SECTION. Sec. 4. RCW 1.50.020 (Application for medal) and 1998 c 59 s 3 are each repealed.

Passed the Senate April 22, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 265

[Substitute Senate Bill 6012]

STATE INVESTMENT BOARD—MONTHLY UNIT VALUATIONS

AN ACT Relating to a monthly unit valuation for certain portfolios and funds managed by the state investment board; and amending RCW 41.34.060 and 41.34.140.

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

Sec. I. RCW 41.34.060 and 1998 c 341 s 303 are each amended to read as follows:

(1) Except as provided in subsection ~~((2))~~ (3) of this section, the member's account shall be invested by the state investment board. In order to reduce transaction costs and address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection ~~((2))~~ (3) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan III, investment shall be in the same portfolio as that of the teachers' retirement system combined plan II and III fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan III, investment shall be in the same portfolio as that of the school employees' retirement system combined plan II and III fund under RCW 41.50.075(4).

(2) The state investment board shall declare monthly unit values for the portfolios or funds, or portions thereof, utilized under subsection (1)(a) and (b) of

this section. The declared values shall be an approximation of portfolio or fund values, based on internal procedures of the state investment board. Such declared unit values and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030. Member accounts shall be credited by the department with a rate of return based on changes to such unit values.

(3) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190.

Sec. 2. RCW 41.34.140 and 1998 c 341 s 308 are each amended to read as follows:

(1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member defined contribution investments selected or required pursuant to RCW 41.34.060 (1) or ~~((2))~~ (3).

(2) Neither the board nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1) or ~~((2))~~ (3).

(3) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared monthly unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under RCW 41.34.060(2).

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of monthly unit valuations pursuant to RCW 41.34.060(2).

Passed the Senate March 13, 1999.

Passed the House April 12, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 266

[Senate Bill 6065]

PUBLIC CORPORATION PROPERTY—EXCISE TAX EXEMPTION

AN ACT Relating to providing an excise tax exemption for property owned, operated, or controlled by a public corporation if the property is used as a public esplanade, street, public way, public open space, park, public utility corridor, or view corridor for the general public or the property is used to implement an agreement or plan; and amending RCW 35.21.755.

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

Sec. 1. RCW 35.21.755 and 1995 c 399 s 38 are each amended to read as follows:

(1) A public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 shall receive the same immunity or exemption from

taxation as that of the city, town, or county creating the same: PROVIDED, That, except for (a) any property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites or (b) any property owned, operated, or controlled by a public corporation that is used primarily for low-income housing, or that is used as a convention center, performing arts center, public assembly hall, ((or)) public meeting place, public esplanade, street, public way, public open space, park, public utility corridor, or view corridor for the general public or (c) any blighted property owned, operated, or controlled by a public corporation that was acquired for the purpose of remediation and redevelopment of the property in accordance with an agreement or plan approved by the city, town, or county in which the property is located, any such public corporation, commission, or authority shall pay to the county treasurer an annual excise tax equal to the amounts which would be paid upon real property and personal property devoted to the purposes of such public corporation, commission, or authority were it in private ownership, and such real property and personal property is acquired and/or operated under RCW 35.21.730 through 35.21.755, and the proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership: PROVIDED FURTHER, That the provisions of chapter 82.29A RCW shall not apply to property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites and which is controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1987: AND PROVIDED FURTHER, That property within a special review district established by ordinance prior to January 1, 1976, or property which is listed on any federal or state register of historical sites and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1976, shall receive the same immunity or exemption from taxation as if such property had been within a district listed on any such federal or state register of historical sites as of January 1, 1976, and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 which was in existence prior to January 1, 1976.

(2) As used in this section:

(a) "Low-income" means a total annual income, adjusted for family size, not exceeding fifty percent of the area median income.

(b) "Area median income" means:

(i) For an area within a standard metropolitan statistical area, the area median income reported by the United States department of housing and urban development for that standard metropolitan statistical area; or

(ii) For an area not within a standard metropolitan statistical area, the county median income reported by the department of community, trade, and economic development.

(c) "Blighted property" means property that is contaminated with hazardous substances as defined under RCW 70.105D.020(7).

Passed the Senate April 22, 1999.

Passed the House April 13, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

CHAPTER 267

[Engrossed Second Substitute House Bill 1493]

HOMELESS FAMILIES WITH CHILDREN

AN ACT Relating to homeless children and their families; amending RCW 43.63A.650, 13.34.030, 74.13.020, 74.13.031, 74.15.020, and 26.44.030; reenacting and amending RCW 13.34.130, 13.34.130, and 13.34.145; adding a new section to chapter 43.20A RCW; adding new sections to chapter 43.63A RCW; adding new sections to chapter 74.15 RCW; adding a new section to chapter 13.60 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 homelessness for families with children is a serious, widespread problem that has a devastating effect on children, including significant adverse effects upon their growth and development. Planning for and serving the shelter and housing needs of homeless families with children has been and continues to be a responsibility of the department of community, trade, and economic development. The legislature further finds that the department of social and health services also plays an important role in addressing the service needs of homeless families with children. In order to adequately and effectively address the complex issues confronting homeless families with children, planning for, implementing, and evaluating such services must be a collaborative effort between the department of community, trade, and economic development and the department of social and health services, other local, state, and federal agencies, and community organizations. It is the intent of the legislature that the department of community, trade, and economic development and the department of social and health services jointly present the plan to the appropriate committees of the legislature as required in section 3 of this act. It is the intent of the legislature that children should not be placed or retained in the foster care system if family homelessness is the primary reason for placement or the continuation of their placement. It is the further intent of the legislature that services to homeless families with children shall be provided within funds appropriated for that specific purpose by the legislature in the operating and capital budgets. Nothing in this act is intended to prevent the court's review of the plan developed by the department of social and health services and the department of community, trade, and economic development under *Washington State Coalition*

for the Homeless v. Department of Social and Health Services, King County Superior Court No. 91-2-15889-4. However, it is the intent of the legislature that the court's review in that proceeding be confined solely to review of the plan submitted under the order of February 4, 1998. Nothing in sections 1 through 10 of this act is intended to grant the court in this proceeding continuing review over the department of social and health services after the effective date of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 43.20A RCW to read as follows:

(1) The department shall collaborate with the department of community, trade, and economic development in the development of the coordinated and comprehensive plan for homeless families with children required under RCW 43.63A.650, which designates the department of community, trade, and economic development as the state agency with primary responsibility for providing shelter and housing services to homeless families with children. In fulfilling its responsibilities to collaborate with the department of community, trade, and economic development pursuant to RCW 43.63A.650, the department shall develop, administer, supervise, and monitor its portion of the plan. The department's portion of the plan shall contain at least the following elements:

- (a) Coordination or linkage of services with shelter and housing;
- (b) Accommodation and addressing the needs of homeless families in the design and administration of department programs;
- (c) Participation of the department's local offices in the identification, assistance, and referral of homeless families; and
- (d) Ongoing monitoring of the efficiency and effectiveness of the plan's design and implementation.

(2) The department shall include community organizations involved in the delivery of services to homeless families with children, and experts in the development and ongoing evaluation of the plan.

(3) The duties under this section shall be implemented within amounts appropriated for that specific purpose by the legislature in the operating and capital budgets.

Sec. 3. RCW 43.63A.650 and 1993 c 478 s 13 are each amended to read as follows:

(1) The department shall be the principal state department responsible for coordinating federal and state resources and activities in housing, except for programs administered by the Washington state housing finance commission under chapter 43.180 RCW, and for evaluating the operations and accomplishments of other state departments and agencies as they affect housing.

(2) The department shall work with local governments, tribal organizations, local housing authorities, nonprofit community or neighborhood-based organizations, and regional or state-wide nonprofit housing assistance organizations, for the purpose of coordinating federal and state resources with local resources for housing.

(3) The department shall be the principal state department responsible for providing shelter and housing services to homeless families with children. The department shall have the principal responsibility to coordinate, plan, and oversee the state's activities for developing a coordinated and comprehensive plan to serve homeless families with children. The plan shall be developed collaboratively with the department of social and health services. The department shall include community organizations involved in the delivery of services to homeless families with children, and experts in the development and ongoing evaluation of the plan. The department shall follow professionally recognized standards and procedures. The plan shall be implemented within amounts appropriated by the legislature for that specific purpose in the operating and capital budgets. The department shall submit the plan to the appropriate committees of the senate and house of representatives no later than September 1, 1999, and shall update the plan and submit it to the appropriate committees of the legislature by January 1st of every odd-numbered year through 2007. The plan shall address at least the following: (a) The need for prevention assistance; (b) the need for emergency shelter; (c) the need for transitional assistance to aid families into permanent housing; (d) the need for linking services with shelter or housing; and (e) the need for ongoing monitoring of the efficiency and effectiveness of the plan's design and implementation.

NEW SECTION. Sec. 4. A new section is added to chapter 43.63A RCW to read as follows:

(1) In order to improve services for the homeless, the department, within amounts appropriated by the legislature for this specific purpose, shall implement a system for the ongoing collection and analysis of data about the extent and nature of homelessness in Washington state, giving emphasis to information about extent and nature of homelessness in Washington state families with children. The system may be merged with other data gathering and reporting systems and shall:

- (a) Protect the right of privacy of individuals;
- (b) Provide for consultation and collaboration with state agencies including the department of social and health services, experts, and community organizations involved in the delivery of services to homeless persons; and
- (c) Include related information held or gathered by other state agencies.

(2) Within amounts appropriated by the legislature, for this specific purpose, the department shall evaluate the information gathered and disseminate the analysis and the evaluation broadly, using appropriate computer networks as well as written reports.

NEW SECTION. Sec. 5. A new section is added to chapter 43.63A RCW to read as follows:

The department shall, by rule, establish program standards, eligibility standards, eligibility criteria, and administrative rules for emergency housing programs and specify other benefits that may arise in consultation with providers.

Sec. 6. RCW 13.34.030 and 1998 c 130 s 1 are each amended to read as follows:

For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years.

(2) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until the child returns home, an adoption decree, a permanent custody order, or guardianship order is entered, or the dependency is dismissed, whichever occurs soonest. If the most recent date of removal occurred prior to the filing of a dependency petition under this chapter or after filing but prior to entry of a disposition order, such time periods shall be included when calculating the length of a child's current placement episode.

(3) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to RCW 13.34.232 for the limited purpose of assisting the court in the supervision of the dependency.

(4) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has expressed either by statement or conduct, an intent to forego, for an extended period, parental rights or parental responsibilities despite an ability to do so. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon;

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Who has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(5) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(6) "Guardian ad litem" means a person, appointed by the court to represent the best interest of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(7) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(8) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(9) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

Sec. 7. RCW 74.13.020 and 1979 c 155 s 76 are each amended to read as follows:

As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

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

(2) Protecting and caring for ~~((homeless;))~~ dependent~~((;))~~ or neglected children;

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

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

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

As used in this chapter, child means a person less than eighteen years of age.

The department's duty to provide services to homeless families with children is set forth in section 2 of this act and in appropriations provided by the legislature for implementation of the plan.

Sec. 8. RCW 74.13.031 and 1998 c 314 s 10 are each amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of ~~((homeless;))~~ runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(12) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

Sec. 9. RCW 13.34.130 and 1998 c 314 s 2 and 1998 c 130 s 2 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services, including housing assistance, that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not

required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is related to the child as defined in RCW 74.15.020~~((4)(a))~~ (2)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds: (a) Termination is recommended by the supervising agency; (b) termination is in the best interests of the child; and (c) that because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interest of the child. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

(i) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(ii) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(iii) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(iv) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child; .

(v) Conviction of the parent of attempting, soliciting, or conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of this subsection;

(vi) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(vii) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. (~~(See-))~~) Sec. 1903, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(viii) An infant under three years of age has been abandoned as defined in RCW 13.34.030(4)(a);

(ix) The mother has given birth to three or more drug-affected infants, resulting in the department filing a petition under section 23 of this act.

(3) If reasonable efforts are not ordered under subsection (2) of this section a permanency (~~(plan-planning))~~ planning hearing shall be held within thirty days. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; (~~(or)~~) long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older; or a responsible living skills program. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed,

what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

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

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

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

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon

cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(7) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(8) The court's ability to order housing assistance under this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.

NEW SECTION. Sec. 10. Sections 10 through 26 of this act may be referred to as the homeless youth prevention, protection, and education act, or the HOPE act. Every day many youth in this state seek shelter out on the street. A nurturing nuclear family does not exist for them, and state-sponsored alternatives such as foster homes do not meet the demand and isolate youth, who feel like outsiders in families not their own. The legislature recognizes the need to develop placement alternatives for dependent youth ages sixteen to eighteen, who are living on the street. The HOPE act is an effort to engage youth and provide them access to services through development of life skills in a setting that supports them. Nothing in sections 10 through 26 of this act shall constitute an entitlement.

Sec. 11. RCW 74.15.020 and 1998 c 269 s 3 are each amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(d) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(e) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(h) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(i) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

~~((+))~~ (j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the

age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(g) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(h) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(i) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(j) Licensed physicians or lawyers;

(k) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(l) Facilities approved and certified under chapter 71A.22 RCW;

(m) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(n) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(o) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(p) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(6) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

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

(8) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(9) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

NEW SECTION. Sec. 12. A new section is added to chapter 74.15 RCW to read as follows:

The secretary shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Street youth may leave a HOPE center during the course of the

day to attend school or other necessary appointments, but the street youth must be accompanied by an administrator or an administrator's designee. The street youth must provide the administration with specific information regarding his or her destination and expected time of return to the HOPE center. Any street youth who runs away from a HOPE center shall not be readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:

(a) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;

(b) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department. The department shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;

(c) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;

(d) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;

(e) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and

(f) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;

(3) Staff trained in development needs of street youth as determined by the secretary, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;

(4) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary;

(5) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 13.32A.130(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary if the youth is a dependent of the state under chapter 13.34 RCW or the department is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(6) HOPE centers must identify to the department any street youth it serves who is not returning promptly to home. The department then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department;

(7) Services that provide counseling and education to the street youth; and

(8) The department shall only award contracts for the operation of HOPE center beds and responsible living skills programs in departmental regions: (a) With operating secure crisis residential centers; or (b) in which the secretary finds significant progress is made toward opening a secure crisis residential center.

NEW SECTION. Sec. 13. A new section is added to chapter 74.15 RCW to read as follows:

The secretary shall establish responsible living skills programs that provide no more than seventy-five beds across the state and may establish responsible living skills programs by contract, within funds appropriated by the legislature specifically for this purpose. Responsible living skills programs shall have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth available to serve residents or a bachelor of arts degree in social work or a related field and five

years of experience working with street youth. The professional shall provide counseling services and interface with other relevant resources and systems to prepare the minor for adult living. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency;

(3) Staff trained in development needs of older adolescents eligible to participate in responsible living skills programs as determined by the secretary;

(4) Transitional living services and a therapeutic model of service delivery that provides necessary program supervision of residents and at the same time includes a philosophy, program structure, and treatment planning that emphasizes achievement of competency in independent living skills. Independent living skills include achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, obtaining and maintaining employment; accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each resident shall have a plan for achieving independent living skills by the time the resident leaves the placement. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A resident who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be placed outside the program; and

(5) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary.

(6) The department shall not award contracts for the operation of responsible living skills programs until HOPE center beds are operational.

NEW SECTION. Sec. 14. A new section is added to chapter 74.15 RCW to read as follows:

To be eligible for placement in a responsible living skills program, the minor must be dependent under chapter 13.34 RCW and must have lived in a HOPE center or in a secure crisis residential center. Responsible living skills centers are intended as a placement alternative for dependent youth that the department chooses for the youth because no other services or alternative placements have been successful. Responsible living skills centers are not for dependent youth whose permanency plan includes return to home or family reunification.

NEW SECTION. Sec. 15. A new section is added to chapter 74.15 RCW to read as follows:

The secretary is authorized to license HOPE centers and responsible living skills programs that meet statutory and rule requirements created by the secretary. The secretary is authorized to develop rules necessary to carry out the provisions of sections 10 through 26 of this act. The secretary may rely upon existing

licensing provisions in development of licensing requirements for HOPE centers and responsible living skills programs, as are appropriate to carry out the intent of sections 10 through 26 of this act. HOPE centers and responsible living skills programs shall be required to adhere to departmental regulations prohibiting the use of alcohol, tobacco, controlled substances, violence, and sexual activity between residents.

Sec. 16. RCW 13.34.130 and 1998 c 314 s 2 and 1998 c 130 s 2 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is related to the child as defined in RCW 74.15.020~~((4))~~ (2)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds: (a) Termination is recommended by the supervising agency; (b) termination is in the best interests of the child; and (c) that because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interest of the child. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

(i) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(ii) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(iii) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(iv) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(v) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (c)(i), (ii), (iii), or (iv) of this subsection;

(vi) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(vii) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. (~~{See-}~~)) Sec. 1903, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(viii) An infant under three years of age has been abandoned as defined in RCW 13.34.030(4)(a);

(ix) The mother has given birth to three or more drug-affected infants, resulting in the department filing a petition under section 23 (~~(of this act)~~), chapter 314, Laws of 1998.

(3) If reasonable efforts are not ordered under subsection (2) of this section a permanency (~~(plan-planning))~~ planning hearing shall be held within thirty days. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; (~~(or)~~) long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; a responsible living skills program; and independent living, if appropriate and if the child is age sixteen or older. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

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

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

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

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(7) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

Sec. 17. RCW 13.34.145 and 1998 c 314 s 3 and 1998 c 130 s 3 are each reenacted and amended to read as follows:

(1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and

permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; ~~((or))~~ long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; a responsible living skills program; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

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

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(d) For purposes related to permanency planning:

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

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

(iii) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or of a federally recognized Indian tribe.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(3) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as

provided in subsection (3) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or permanent custody order is entered, or the dependency is dismissed.

(5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(7) and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280 and 13.34.130(7). If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented;
or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.130(7), and the court shall determine the need for continued intervention.

(8) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when, (a) the court has ordered implementation of a permanency plan that includes legal guardianship or permanent legal custody, and (b) the party pursuing the legal guardianship or permanent legal custody is the party identified in the permanency plan as the prospective legal guardian or custodian. During the pendency of such proceeding, juvenile court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a

juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(10) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.130(7), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(11) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(12) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

(13) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

NEW SECTION. Sec. 18. A new section is added to chapter 13.60 RCW to read as follows:

The department of social and health services shall develop a procedure for reporting missing children information to the missing children clearinghouse on children who are receiving departmental services in each of its administrative regions. The purpose of this procedure is to link parents to missing children. When the department has obtained information that a minor child has been located at a facility funded by the department, the department shall notify the clearinghouse and the child's legal custodian, advising the custodian of the child's whereabouts or that the child is subject to a dependency action. The department shall inform the clearinghouse when reunification occurs.

NEW SECTION. Sec. 19. The Washington institute for public policy shall review the effectiveness of the procedures established in section 18 of this act. The study shall include: (1) The number of legal custodians who utilize the clearinghouse; (2) the number of children who are located after the department's procedures are operational; (3) the impediments to effective utilization of the

procedures and what steps may be taken to reduce or eliminate the impediments; (4) the methods of public education regarding the availability of the program and how to increase public awareness of the program.

The review shall be submitted to the legislature and the governor not later than December 1, 2001.

Sec. 20. RCW 26.44.030 and 1998 c 328 s 5 are each amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement shall also apply to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child or adult dependent or developmentally disabled person, who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report shall be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled

persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section

if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the legislature on the effectiveness of the risk assessment process.

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral.

NEW SECTION. Sec. 21. A new section is added to chapter 74.15 RCW to read as follows:

The department shall provide technical assistance in preparation of grant proposals for HOPE centers and responsible living skills programs to nonprofit organizations unfamiliar with and inexperienced in submission of requests for proposals to the department.

NEW SECTION. Sec. 22. A new section is added to chapter 74.15 RCW to read as follows:

The department shall consider prioritizing, on an ongoing basis, the awarding of contracts for HOPE centers and responsible living skills programs to providers who have not traditionally been awarded contracts with the department.

NEW SECTION. Sec. 23. The department of social and health services shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26 of this act. The department shall pursue federal funding sources for the programs created under sections 10 through 26 of this act, and report to the legislature any statutory barriers to federal funding.

NEW SECTION. Sec. 24. The Washington state institute for public policy shall review the effectiveness of the HOPE centers and the responsible living skills programs. The study shall include the characteristics of the youth being served, the services offered to participating youth, the success of permanent placement of youth, the number of youth participating in each program, the number of youth who successfully complete the responsible living skills program, educational achievement of participants, employment history of participants, the outcomes for youth who have progressed through the programs, and other measures that the institute deems helpful in determining the measurable outcomes of sections 10 through 26 of this act.

The review shall be submitted to the legislature and the governor not later than December 1, 2001.

NEW SECTION. Sec. 25. 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. 26. Within funds specifically appropriated by the legislature, HOPE center beds referenced in section 12 of this act and responsible living skills program beds referenced in section 13 of this act shall be phased in at the rate of twenty-five percent each year beginning January 1, 2000, until the maximum is attained.

NEW SECTION. Sec. 27. Sections 12 and 13 of this act take effect January 1, 2000.

Passed the House April 25, 1999.

Passed the Senate April 24, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 268

[Substitute House Bill 1304]

TRANSPORTATION IMPROVEMENT BOARD BOND RETIREMENT ACCOUNT

AN ACT Relating to transportation improvement board bond retirement account revisions; amending RCW 47.26.426, 47.26.427, 47.26.507, 43.84.092, and 43.84.092; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 47.26.426 and 1981 c 315 s 11 are each amended to read as follows:

At least one year prior to the date any interest is due and payable on such first authorization bonds, series II bonds, and series III bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.425, 47.26.4252, and 47.26.4254 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.425, 47.26.4252, and 47.26.4254, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the (~~highway bond retirement fund~~) transportation improvement board bond retirement account, maintained in the office of the state treasurer, which fund shall be available for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond

retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times.

Sec. 2. RCW 47.26.427 and 1979 c 5 s 11 are each amended to read as follows:

Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the (~~highway bond retirement fund~~) transportation improvement board bond retirement account, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period.

Sec. 3. RCW 47.26.507 and 1993 c 440 s 8 are each amended to read as follows:

Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the (~~highway bond retirement fund~~) transportation improvement board bond retirement account, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period.

Sec. 4. RCW 43.84.092 and 1997 c 218 s 5 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) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of

treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The 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 drinking water assistance account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the highway infrastructure 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 real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, 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 transportation infrastructure account, the tuition recovery trust fund, 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, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(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 aeronautics account, the aircraft search and rescue account, the central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the department of licensing services account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the gasohol exemption holding account, 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 marine operating fund, 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 safety and education account, the small city 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, the transportation improvement board retirement account, the transportation revolving loan account, and the urban arterial trust account.

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

Sec. 5. RCW 43.84.092 and 1998 c 341 s 708 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) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management

improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The 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 drinking water assistance account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the highway infrastructure 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 real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, 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 combined plan II and plan III account, the transportation infrastructure account, the tuition recovery trust fund, 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 school employees' retirement system combined plan II and III account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(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 aeronautics account, the aircraft search and rescue account, the central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the department of licensing services account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the gasohol exemption holding account, 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 marine operating fund, 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 safety and education account, the small city 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, the transportation improvement board bond retirement account, the transportation revolving loan account, and the urban arterial trust account.

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

NEW SECTION. Sec. 6. Section 4 of this act expires September 1, 2000.

NEW SECTION. **Sec. 7.** Section 5 of this act takes effect September 1, 2000.

Passed the House March 10, 1999.

Passed the Senate April 14, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 269

[Substitute House Bill 1053]

FUEL TAX—DISTRIBUTION

AN ACT Relating to the consolidation of the fuel tax rate, and fuel tax distribution statutes maintaining revenue neutrality among fuel tax recipients; amending RCW 36.78.070, 46.68.110, 46.68.130, 47.26.405, 47.26.425, 47.26.4252, 47.26.4254, 47.26.505, 47.30.030, 47.30.050, 47.56.725, 47.56.750, 47.56.771, 47.60.420, and 82.36.025; reenacting and amending RCW 46.68.090; creating a new section; repealing RCW 46.68.095, 46.68.100, 46.68.115, 46.68.150, 47.26.060, 47.26.070, and 47.26.410; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 36.78.070 and 1993 c 65 s 3 are each amended to read as follows:

The county road administration board shall:

- (1) Establish by rule, standards of good practice for the administration of county roads and the efficient movement of people and goods over county roads;
- (2) Establish reporting requirements for counties with respect to the standards of good practice adopted by the board;
- (3) Receive and review reports from counties and reports from its executive director to determine compliance with legislative directives and the standards of good practice adopted by the board;
- (4) Advise counties on issues relating to county roads and the safe and efficient movement of people and goods over county roads and assist counties in developing uniform and efficient transportation-related information technology resources;
- (5) Report annually before the fifteenth day of January, and throughout the year as appropriate, to the state department of transportation and to the chairs of the legislative transportation committee and the house and senate transportation committees, and to other entities as appropriate on the status of county road administration in each county, including one copy to the staff of each of the committees. The annual report shall contain recommendations for improving administration of the county road programs;
- (6) Administer the rural arterial program established by chapter 36.79 RCW and the program funded by the county arterial preservation ((program)) account established by RCW ((~~46.68.095~~)) 46.68.090, as well as any other programs provided for in law.

Sec. 2. RCW 46.68.090 and 1994 c 225 s 2 and 1994 c 179 s 3 are each reenacted and 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~~((:))~~ enumerated in (a) and (b) of this subsection. The remaining net tax amount shall be distributed monthly by the state treasurer in the proportions set forth in (c) through (l) of this subsection.

(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) From July 1, 1994, through June 30, 1995, for distribution to the gasoline 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;~~

~~—(m) 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.")~~ For distribution to the

motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(d) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

(i) Accident experience;

(ii) Fatal accident experience;

(iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and

(iv) 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 (1)(d);

(e) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(f) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(g) For distribution to the urban arterial trust account in the motor vehicle fund an amount equal to 7.5597 percent;

(h) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(i) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(j) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) 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 (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(k) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall 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;

(1) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(2) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels.

Sec. 3. RCW 46.68.110 and 1996 c 94 s 1 are each amended to read as follows:

Funds credited to the incorporated cities and towns of the state as set forth in RCW (~~46.68.100(+)~~) 46.68.090(1)(i) shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds shall be deducted monthly, as such funds accrue, to be deposited in the (~~city hardship assistance~~) urban arterial trust account, (~~hereby created in the motor vehicle fund~~) to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program as of (~~July 1, 1996, and~~) July 1st of each odd-numbered year thereafter, shall be provided within sixty days to the treasurer and distributed in the manner prescribed in subsection (~~(4)~~) (5) of this section;

(4) 31.86 percent of the fuel tax distributed to the cities and towns in RCW 46.68.090(1)(i) shall be allocated to the incorporated cities and towns in the manner set forth in subsection (5) of this section and subject to deductions in subsections (1), (2), and (3) of this section, subject to RCW 35.76.050, to be used exclusively for: The construction, improvement, chip sealing, seal-coating, and repair for arterial highways and city streets as those terms are defined in RCW 46.04.030 and 46.04.120; the maintenance of arterial highways and city streets for those cities with a population of less than fifteen thousand; or the payment of any

municipal indebtedness which may be incurred in the construction, improvement, chip sealing, seal-coating, and repair of arterial highways and city streets; and

(5) The balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management.

Sec. 4. RCW 46.68.130 and 1981 c 342 s 11 are each amended to read as follows:

The ((net)) tax amount distributed to the state in the manner provided by RCW ((46.68.100)) 46.68.090, and all moneys accruing to the motor vehicle fund from any other source, less such sums as are properly appropriated and reappropriated for expenditure for costs of collection and administration thereof, shall be expended, subject to proper appropriation and reappropriation, solely for highway purposes of the state, including the purposes of RCW 47.30.030. For the purposes of this section, the term "highway purposes of the state" does not include those expenditures of the Washington state patrol heretofore appropriated or reappropriated from the motor vehicle fund. Nothing in this section or in RCW 46.68.090 may be construed so as to violate terms or conditions contained in highway construction bond issues authorized by statute as of the effective date of this section or thereafter and whose payment is, by the statute, pledged to be paid from excise taxes on motor vehicle fuel and special fuels.

Sec. 5. RCW 47.26.405 and 1977 ex.s. c 317 s 17 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 state under the provisions of RCW ((46.68.100(6) as now or hereafter amended)) 46.68.090(1)(c) for construction of state highways in urban areas, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available to the state for construction of state highways in urban areas proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Sec. 6. RCW 47.26.425 and 1994 c 179 s 22 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)) pursuant to RCW

~~((82.36.025(3) and 46.68.100(9)))~~ 46.68.090(1)(g), 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. 7. RCW 47.26.4252 and 1995 c 274 s 12 are each amended to read as follows:

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall 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 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))~~ pursuant to RCW ((82.36.025(3) and 46.68.100(9))) 46.68.090(1)(g), 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))~~ 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall 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. 8. RCW 47.26.4254 and 1995 c 274 s 13 are each amended to read as follows:

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall 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 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))~~ pursuant to RCW ((82.36.025(3) and 46.68.100(9))) 46.68.090(1)(g), 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))~~ 46.68.090, 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)))~~ 46.68.090(1)(i) and to the counties pursuant to RCW ~~((46.68.100(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))~~ 46.68.090(1)(j). 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. 9. RCW 47.26.505 and 1994 c 179 s 29 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))~~ 46.68.090, 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. 10. RCW 47.30.030 and 1979 ex.s. c 121 s 1 are each amended to read as follows:

Where an existing highway severs, or where the right of way of an existing highway accommodates a trail for pedestrians, equestrians, or bicyclists or where the separation of motor vehicle traffic from pedestrians, equestrians, or bicyclists will materially increase the motor vehicle safety, the provision of facilities for pedestrians, equestrians, or bicyclists which are a part of a comprehensive trail plan adopted by federal, state, or local governmental authority having jurisdiction over the trail is hereby authorized. The department of transportation, or the county or city having jurisdiction over the highway, road, or street, or facility is further authorized to expend reasonable amounts out of the funds made available to them, according to the provisions of RCW (~~(46.68.100)~~) 46.68.090, as necessary for the planning, accommodation, establishment, and maintenance of such facilities.

Sec. II. RCW 47.30.050 and 1979 ex.s. c 121 s 2 are each amended to read as follows:

(1) The amount expended by a city, town, or county as authorized by RCW 47.30.030(~~(, as now or hereafter amended,)~~) shall never in any one fiscal year be less than (~~(one-half of one)~~) 0.42 percent of the total amount of funds received from the motor vehicle fund according to (~~(the provisions of)~~) RCW (~~(46.68.100: PROVIDED, That)~~) 46.68.090. However, this section does not apply to a city or town in any year in which the (~~(one-half of one)~~) 0.42 percent equals five hundred dollars or less, or to a county in any year in which the (~~(one-half of one)~~) 0.42 percent equals three thousand dollars or less(~~(, PROVIDED FURTHER, That)~~), Also, a city, town, or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund, to be held for not more than ten years, and to be expended for the purposes required or permitted by RCW 47.30.030.

(2) In each fiscal year the department of transportation shall expend, as a minimum, for the purposes mentioned in RCW 47.30.030(~~(, as now or hereafter amended,)~~) a sum equal to three-tenths of one percent of all funds, both state and federal, expended for the construction of state highways in such year, or in order to more efficiently program trail improvements the department may defer any part of such minimum trail or path expenditures for a fiscal year for a period not to exceed four years after the end of such fiscal year. Any fiscal year in which the department expends for trail or path purposes more than the minimum sum required by this subsection, the amount of such excess expenditure shall constitute a credit which may be carried forward and applied to the minimum trail and path expenditure requirements for any of the ensuing four fiscal years.

(3) The department of transportation, a city, or a county in computing the amount expended for trails or paths under their respective jurisdictions may include the cost of improvements consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980.

Sec. 12. RCW 47.56.725 and 1991 c 310 s 1 are each amended to read as follows:

(1) The department is hereby authorized to enter into a continuing agreement with Pierce, Skagit, and Whatcom counties pursuant to which the department shall, from time to time, direct the distribution to each of the counties the amounts authorized in subsection (2) of this section in accordance with RCW (~~46.68.100~~) 46.68.090.

(2) The department is authorized to include in each agreement a provision for the distribution of funds to each county to reimburse the county for fifty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry system owned and operated by the county. The total amount to be reimbursed to Pierce, Skagit, and Whatcom counties collectively shall not exceed one million dollars in any biennium. Each county agreement shall contain a requirement that the county shall maintain tolls on its ferries at least equal to tolls in place on January 1, 1990.

(3) The annual fiscal year operating and maintenance deficit, if any, shall be determined by Pierce, Skagit, and Whatcom counties subject to review and approval of the department. The annual fiscal year operating and maintenance deficit is defined as the total of operations and maintenance expenditures less the sum of ferry toll revenues and that portion of fuel tax revenue distributions which are attributable to the county ferry as determined by the department. Distribution of the amounts authorized by subsection (2) of this section by the state treasurer shall be directed by the department upon the receipt of properly executed vouchers from each county.

(4) The county road administration board may evaluate requests by Pierce, Skagit, Wahkiakum, and Whatcom counties for county ferry capital improvement funds. The board shall evaluate the requests and, if approved by a majority of the board, submit the requests to the legislature for funding out of the amounts available under RCW (~~46.68.100(3)~~) 46.68.090(1)(j). Any county making a request under this subsection shall first seek funding through the public works trust fund, or any other available revenue source, where appropriate.

Sec. 13. RCW 47.56.750 and 1995 c 274 s 16 are each amended to read as follows:

There is hereby created in the highway bond retirement fund in the state treasury a special account to be known as the Columbia river toll bridge account into which shall be deposited any capitalized interest from the proceeds of the bonds, and at least monthly all of the tolls and other revenues received from the operation of the toll bridge and from any interest which may be earned from the

deposit or investment of these revenues after the payment of costs of operation, maintenance, management, and necessary repairs of the facility. The principal of and interest on the bonds shall be paid first from money deposited in the Columbia river toll bridge account in the highway bond retirement fund, and then, to the extent that money deposited in that account is insufficient to make any such payment when due, from the state excise taxes on motor vehicle and special fuels deposited in the highway bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the bonds if the money deposited in the Columbia river toll bridge account of the highway bond retirement fund is insufficient to make such payments. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional moneys as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the highway bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the state. If the proceeds from the excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the bonds when due, the amount required to make the payments on the principal or interest 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~~) 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first moneys distributed to the state not required for redemption of the bonds or interest thereon. The legislature covenants and pledges that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the bonds.

Sec. 14. RCW 47.56.771 and 1995 c 274 s 17 are each amended to read as follows:

(1) The refunding bonds authorized under RCW 47.56.770 shall be general obligation bonds of the state of Washington and shall be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued shall be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that

fund to pay the first interest installment on the refunding bonds. The refunding bonds shall be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds shall not be later than January 1, 2002.

(2) The refunding bonds shall be signed by the governor and the state treasurer under the seal of the state, which signatures shall be made manually or in printed facsimile. The bonds shall be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state, and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds shall be fully negotiable instruments.

(3) The principal and interest on the refunding bonds shall be first payable in the manner provided in this section from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW.

(4) The principal of and interest on the refunding bonds shall be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional money as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest shall 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))~~ 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants

that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds.

Sec. 15. RCW 47.60.420 and 1990 c 42 s 407 are each amended to read as follows:

To the extent that all revenues from the Washington state ferry system available therefor are insufficient to provide for the payment of principal and interest on the bonds authorized and issued under RCW 47.60.400 through ~~((47.60.470))~~ 47.60.450 and for sinking fund requirements established with respect thereto and for payment into such reserves as the department has established with respect to the securing of the bonds, there is imposed a first and prior charge against the Puget Sound capital construction account of the motor vehicle fund created by RCW 47.60.505 and, to the extent required, against all revenues required by RCW ~~((46.68.100))~~ 46.68.090 to be deposited in the Puget Sound capital construction account.

To the extent that the revenues from the Washington state ferry system available therefor are insufficient to meet required payments of principal and interest on bonds, sinking fund requirements, and payments into reserves, the department shall use moneys in the Puget Sound capital construction account for such purpose.

Sec. 16. RCW 82.36.025 and 1994 c 179 s 30 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))~~ twenty-three 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. 17. The following acts or parts of acts are each repealed:

(1) RCW 46.68.095 (Distribution of additional state-wide taxes) and 1994 c 179 s 4 & 1990 c 42 s 103;

(2) RCW 46.68.100 (Allocation of net tax amount in motor vehicle fund) and 1994 c 179 s 5, 1991 c 310 s 2, 1986 c 66 s 1, 1984 c 7 s 73, 1977 ex.s. c 317 s 9, 1977 c 51 s 1, 1975-'76 2nd ex.s. c 57 s 1, 1973 1st ex.s. c 124 s 1, 1972 ex.s. c 24 s 2, 1970 ex.s. c 85 s 4, 1967 ex.s. c 145 s 79, 1967 ex.s. c 83 s 8, 1961 ex.s. c 7 s 6, & 1961 c 12 s 46.68.100;

(3) RCW 46.68.115 (Allocation and use of amounts distributed to cities and towns) and 1987 c 234 s 1, 1983 c 43 s 1, & 1977 ex.s. c 317 s 10;

(4) RCW 46.68.150 (Construction and improvements in urban areas—Expenditure of motor vehicle fuel taxes and bond proceeds) and 1984 c 7 s 74, 1977 ex.s. c 317 s 11, & 1967 ex.s. c 83 s 9;

(5) RCW 47.26.060 (Apportionment of funds to regions—Manner and basis—Biennial adjustment) and 1981 c 315 s 1 & 1967 ex.s. c 83 s 12;

(6) RCW 47.26.070 (Apportioned funds budgeted and expended for projects in urban areas—Priority programming—Long-range objectives) and 1984 c 7 s 154 & 1967 ex.s. c 83 s 13; and

(7) RCW 47.26.410 (Expenditures from fuel taxes and bond proceeds for urban state highways in excess of amount apportionable to a region authorized) and 1984 c 7 s 162 & 1967 ex.s. c 83 s 44.

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 takes effect July 1, 1999.

NEW SECTION. Sec. 19. This act is null and void if House Bill No. 1588, or similar legislation merging the small city account and the city hardship

assistance account into the urban arterial trust account, does not become law by July 1, 1999.

Passed the House March 9, 1999.

Passed the Senate April 21, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 270

[House Bill 2201]

VEHICLE TRIP PERMITS—SURCHARGES

AN ACT Relating to trip permit surcharges, and amending RCW 46.16.160 and 82.38.100.

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

Sec. 1. RCW 46.16.160 and 1996 c 184 s 2 are each amended to read as follows:

(1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits may also be issued for movement of mobile homes pursuant to RCW 46.44.170. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days, except that in the case of a recreational vehicle as defined in RCW 43.22.335, no more than two trip permits may be used for any one vehicle in a one-year period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(3) Vehicles operating under authority of trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) Trip permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. For each permit issued, there shall be collected a filing fee as provided by RCW 46.01.140, an administrative fee of eight dollars, and an excise tax of one dollar. If the filing fee amount of one dollar prescribed by RCW 46.01.140 is increased or decreased after January 1, 1981, the administrative fee shall be adjusted to compensate for such change to insure that the total amount collected for the filing fee, administrative fee, and excise tax remain at ten dollars. These fees and taxes are in lieu of all other vehicle license fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) A violation of or a failure to comply with any provision of this section is a gross misdemeanor.

(8) The department of licensing may adopt rules as it deems necessary to administer this section.

(9) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW 46.01.140.

Sec. 2. RCW 82.38.100 and 1998 c 176 s 62 are each amended to read as follows:

(1) Any special fuel user operating a motor vehicle into this state for commercial purposes may make application for a trip permit that shall be good for a period of three consecutive days beginning and ending on the dates specified on the face of the permit issued, and only for the vehicle for which it is issued.

(2) Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety, signed, and dated by the

operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) For each permit issued, there shall be collected a filing fee of one dollar, an administrative fee of ten dollars, and an excise tax of nine dollars. Such fees and tax shall be in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state, and no report of mileage shall be required with respect to such vehicle. Trip permits will not be issued if the applicant has outstanding fuel taxes, penalties, or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed.

(4) Blank permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(5) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other fees and excise taxes collected by the department for trip permits shall be credited and deposited in the same manner as the special fuel tax collected under this chapter and shall not be subject to exchange, refund, or credit.

Passed the House April 25, 1999.

Passed the Senate April 25, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 271

[Substitute House Bill 2053]

VEHICLE AND VESSEL LICENSING--CREDIT CARD PAYMENTS

AN ACT Relating to vehicle and vessel titling and registration fees; and adding a new section to chapter 46.01 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.01 RCW to read as follows:

The department may adopt necessary rules and procedures to allow use of credit and debit cards for payment of fees and excise taxes to the department and

its agents or subagents related to vehicle and vessel titling and registration. The department may establish a convenience fee to be paid by the credit or debit card user whenever a credit or debit card is chosen as the payment method. The fee must be sufficient to offset the charges imposed on the department and its agents and subagents by credit and debit card companies. In no event may the use of credit or debit cards authorized by this section create a loss of revenue to the state.

The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution.

Passed the House April 19, 1999.

Passed the Senate April 7, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 272

[Substitute House Bill 1774]

OCCUPATIONAL DRIVERS' LICENSES

AN ACT Relating to occupational drivers' licenses; amending RCW 46.20.394; reenacting and amending RCW 46.20.391; and providing an effective date.

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

Sec. 1. RCW 46.20.391 and 1998 c 209 s 4 and 1998 c 207 s 9 are each reenacted and amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, or who has had his or her license suspended under RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or pursuant to RCW 46.20.3101 (2)(a) or (3)(a). A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or pay a traffic ticket under RCW 46.20.289; a violation of the financial responsibility laws under chapter 46.29 RCW; or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license if the

applicant demonstrates to the satisfaction of the department that one of the following additional conditions are met:

(i) The applicant is in an apprenticeship program or an on-the-job training program for which a driver's license is required;

(ii) The applicant presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program and the program has certified that a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect no longer than fourteen days;

(iii) The applicant is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license; or

(iv) The applicant is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as alcoholics anonymous.

(b) If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.

(c) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation but not more than two years.

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection.

(e) The department shall not issue an occupational driver's license under (a)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (a)(iv) of this subsection.

(3) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed any of the following offenses: (i) Driving or being in actual physical control of a motor

vehicle while under the influence of intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or (iii) vehicular assault under RCW 46.61.522; and

(c) The applicant is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle, except as allowed under subsection (2)(a) of this section; and

(d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

~~((3))~~ (4) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense that pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 2. RCW 46.20.394 and 1983 c 165 s 26 are each amended to read as follows:

In issuing an occupational driver's license under RCW 46.20.391, the department shall describe the type of occupation permitted and shall set forth in detail the specific hours of the day during which the person may drive to and from his place of work, which may not exceed twelve hours in any one day; the days of the week during which the license may be used; and the general routes over which the person may travel. In issuing an occupational driver's license under RCW 46.20.391(2)(a)(iv), the department shall set forth in detail the specific hours during which the person may drive to and from substance abuse treatment or meetings of a twelve-step group such as alcoholics anonymous, the days of the week during which the license may be used, and the general routes over which the person may travel. These restrictions shall be prepared in written form by the department, which document shall be carried in the vehicle at all times and presented to a law enforcement officer under the same terms as the occupational driver's license. Any violation of the restrictions constitutes a violation of RCW 46.20.342 and subjects the person to all procedures and penalties therefor.

NEW SECTION. **Sec. 3.** This act takes effect January 1, 2000.

Passed the House April 25, 1999.

Passed the Senate April 24, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 273

[Engrossed Second Substitute Senate Bill 5345]

SCHOOL DISTRICT BOND GUARANTY

AN ACT Relating to the Washington state school district credit enhancement program; amending RCW 39.42.060; adding a new chapter to Title 39 RCW; and providing a contingent effective date.

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

NEW SECTION. Sec. 1. The legislature finds that implementation of the credit enhancement program provided for in this chapter can provide substantial savings to the taxpayers of the state of Washington with minimal cost or risk to the state government. The guaranty provided by pledging the credit of the state to the payment of voter-approved school district general obligation bonds will encourage lower interest rates, and therefore lower taxes, for such bonds than school districts alone can command, despite the excellent credit history of such obligations. Any such guarantee does not remove the debt obligation of the school district and is not state debt.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bond" means any voted general obligation bond issued by a school district, holding a certificate issued pursuant to this chapter for such a bond.

(2) "Credit enhancement program" means the school district bond guaranty established by this chapter.

(3) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a district that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitations.

(4) "Paying agent" means the paying agent selected, from time to time, for a bond issue pursuant to state law.

(5) "Refunding bond" means any general obligation bond issued by a district for the purpose of refunding its outstanding general obligation bonds.

(6) "School district" or "district" means any school district existing now or later under the laws of the state.

NEW SECTION. Sec. 3. (1)(a) The full faith, credit, and taxing power of the state is pledged to guarantee full and timely payment of the principal of and interest on bonds as such payments become due. However, in the event of any acceleration of the due date of the principal by reason of mandatory redemption or acceleration resulting from default, the payments guaranteed shall be made in the amounts and at the times as payments of principal would have been due had there not been any acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under the provisions of this chapter.

(2)(a) The state pledges to and agrees with the owners of any bonds that the state will not alter, impair, or limit the rights vested by the credit enhancement program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged. However, this chapter does not preclude an alteration, impairment, or limitation if full provision is made by law for the payment of the bonds.

(b) Each district may refer to this pledge and undertaking by the state in its bonds.

(3) Only validly issued bonds issued after the effective date of this section may be guaranteed under this chapter.

NEW SECTION. Sec. 4. (1)(a) Any district, by resolution of its board of directors, may request that the state treasurer issue a certificate evidencing the state's guaranty, under this chapter, of its bonds.

(b) After reviewing the request, if the state treasurer determines that the district is eligible under rules adopted by the state finance committee, the state treasurer shall promptly issue the certificate as to specific bonds of the district and provide it to the requesting district.

(c)(i) The district receiving the certificate and all other persons may rely on the certificate as evidencing the guaranty for bonds issued within one year from and after the date of the certificate, without making further inquiry during that year.

(ii) The certificate of eligibility is valid for one year even if the state treasurer later determines that the school district is ineligible.

(2) Any district that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter, may not issue any additional bonds guaranteed by this chapter until:

(a) All payment obligations of the district to the state under the credit enhancement program are satisfied; and

(b) The state treasurer and the state superintendent of public instruction each certify in writing, to be kept on file by the state treasurer and the state superintendent of public instruction, that the district is fiscally solvent.

(4) The state finance committee may establish by rule fees sufficient to cover the costs of administering this chapter.

NEW SECTION. Sec. 5. (1)(a) The county treasurer for each district with outstanding, unpaid bonds shall transfer money sufficient for each scheduled debt service payment to its paying agent on or before any principal or interest payment date for the bonds.

(b) A county treasurer who is unable to transfer a scheduled debt service payment to the paying agent on the transfer date shall immediately notify the paying agent and the state treasurer by:

(i) Telephone;

(ii) A writing sent by facsimile or electronic transmission; and

(iii) A writing sent by first class United States mail.

(2) If sufficient funds are not transferred to the paying agent as required by subsection (1) of this section, the paying agent shall immediately notify the state treasurer of that failure by:

(a) Telephone;

(b) A writing sent by facsimile or electronic transmission; and

(c) A writing sent by first class United States mail.

(3)(a) If sufficient money to pay the scheduled debt service payment have not been so transferred to the paying agent, the state treasurer shall, forthwith, transfer sufficient money to the paying agent to make the scheduled debt service payment.

(b) The payment by the state treasurer:

(i) Discharges the obligation of the issuing district to its bond owners for the payment, but does not retire any bond that has matured. The terms of that bond remain in effect until the state is repaid; and

(ii) Transfers the rights represented by the general obligation of the district from the bond owners to the state.

(c) The district shall repay to the state the money so transferred as provided in this chapter.

NEW SECTION. Sec. 6. (1) Any district that has issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all money drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all money paid by the state from the date that money was drawn to the date the state is repaid at a rate to be prescribed by rule by the state finance committee; and

(c) Pay all penalties required by this chapter.

(2)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the district on the state, market interest and penalty rates, and the cost of funds or opportunity cost of investments, if any, that were required to be borrowed or liquidated by the state to make payment on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the district to make payment on its bonds in a timely manner, impose on the district a penalty of not more than five percent of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(3)(a)(i) If the state treasurer determines that amounts obtained under this chapter will not reimburse the state in full within one year from the state's payment of a district's scheduled debt service payment, the state treasurer may pursue any legal action, including mandamus, against the district to compel it to meet its repayment obligations to the state.

(ii) In pursuing its rights under (a)(i) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a district. If and to the extent that the state has made payments to the holders of bonds of a district under section 5 of this act and has not been reimbursed by the district, the state shall be subrogated to the rights of those bond holders.

(iii) The state treasurer may also direct the district and the appropriate county officials to restructure and revise the collection of taxes for the payment of bonds on which the state treasurer has made payments under this chapter and, to the extent permitted by law, may require that the proceeds of such taxes be applied to the district's obligations to the state if all outstanding obligations of the school

district payable from such taxes are fully paid or their payment is fully provided for.

(b) The district shall pay the fees, expenses, and costs incurred by the state in recovering amounts paid under the guaranty authorized by this chapter.

NEW SECTION. Sec. 7. In order to effect the provisions of Article VIII, section 1(e) of the state Constitution, Senate Joint Resolution No. 8206, the legislature shall make provision for such amounts as may be required to make timely payments under the state school district credit enhancement program under this chapter in each and every biennial appropriations act.

NEW SECTION. Sec. 8. The state finance committee may adopt, under chapter 34.05 RCW, all rules necessary and appropriate for the implementation and administration of this chapter.

Sec. 9. RCW 39.42.060 and 1997 c 220 s 220 (Referendum Bill No. 48) are each amended to read as follows:

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in section 1(c) of Article VIII of the Washington state Constitution for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;

(7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;

(8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness; ~~(and)~~

(9) Indebtedness incurred for the purposes identified in RCW 43.99N.020; and

(10) Indebtedness incurred for the purposes of the school district bond guaranty established by chapter 39.— RCW (sections 1 through 8 of this act).

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee.

NEW SECTION. **Sec. 10.** This act takes effect January 1, 2000, if the proposed amendment to Article VIII, section 1 of the state Constitution, guaranteeing the general obligation debt of school districts, is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety.

NEW SECTION. **Sec. 11.** Sections 1 through 8 of this act constitute a new chapter in Title 39 RCW.

Passed the Senate April 22, 1999.

Passed the House April 14, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 274

[Senate Bill 5374]

DRIVERS' LICENSES

AN ACT Relating to corrective amendments to certain drivers' licensing statutes; amending RCW 46.20.289, 46.20.342, 46.65.060, 46.20.500, 46.20.505, 46.20.510, 46.20.515, 46.20.041, 46.20.055, 46.20.100, and 46.20.117; and reenacting and amending RCW 46.20.308, 46.20.391, 46.52.100, and 46.61.5055.

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

Sec. 1. RCW 46.20.289 and 1995 c 219 s 2 are each amended to read as follows:

The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(5), 46.63.110(5), or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a notice of a violation of RCW 46.55.105 or a standing, stopping, or parking violation. A suspension under this section takes effect thirty days after the date the department mails notice of the suspension, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

Sec. 2. RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

(a) His or her license, permit, or privilege to drive will be revoked or denied if he or she refuses to submit to the test;

(b) His or her license, permit, or privilege to drive will be suspended, revoked, or denied if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.08 or more, in the case of a person age twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and

(c) His or her refusal to take the test may be used in a criminal trial.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or is in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following

a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department

and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has

the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense (~~within the last five years~~) for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, the court may direct the department to stay any actual or proposed suspension, revocation, or denial for at least forty-five days but not more than ninety days. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 3. RCW 46.20.342 and 1993 c 501 s 6 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license;

(v) A conviction of RCW 46.20.420, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

~~((xiii))~~ (xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

~~((xiv))~~ (xv) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes; ~~((xv))~~

~~(xv))~~ (xvi) An administrative action taken by the department under chapter 46.20 RCW; or

(xvii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, or (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of

this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or any combination of (i) through (vi), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

Sec. 4. RCW 46.20.391 and 1998 c 209 s 4 and 1998 c 207 s 9 are each reenacted and amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, or who has had his or her license suspended under RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed either for a violation of RCW 46.61.502 or 46.61.504 or ((pursuant to)) under RCW 46.20.3101 (2)(a) or (3)(a), or for both a violation of RCW 46.61.502 or 46.61.504 and under RCW 46.20.3101 (2)(a) or (3)(a) where the action arises from the same incident. A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed any of the following offenses: (i) Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or (iii) vehicular assault under RCW 46.61.522; and

(c) The applicant is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle; and

(d) The applicant files satisfactory proof of financial responsibility (~~(pursuant to)~~ under chapter 46.29 RCW.

(3) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of ~~((an))~~ a separate offense that ~~((pursuant to))~~ under chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 5. RCW 46.52.100 and 1998 c 204 s 1 and 1998 c 165 s 9 are each reenacted and amended to read as follows:

Every district court, municipal court, and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by the court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every traffic complaint, citation, or notice of infraction deposited with or presented to the district court, municipal court, superior court, or traffic violations bureau. In the case of a record of a conviction for a violation of RCW 46.61.502 or 46.61.504, and notwithstanding any other provision of law, the record shall be maintained by the court permanently.

The Monday following the conviction, forfeiture of bail, or finding that a traffic infraction was committed for violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, every magistrate of the court or clerk of the court of record in which such conviction was had, bail was forfeited, or the finding made shall prepare and immediately forward to the director of licensing at Olympia an abstract of the record of the court covering the case(~~(; which abstract must be certified by the person so required to prepare the same to be true and correct)~~). Report need not be made of any finding involving the illegal parking or standing of a vehicle.

The abstract must be made upon a form or forms furnished by the director and shall include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved if required by the director, the nature of the offense, the date of hearing, the plea, the judgment, whether the offense was an alcohol-related offense as defined in RCW 46.01.260(2), whether the incident that gave rise to the offense charged resulted in any fatality, whether bail forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty as the case may be.

Every court of record shall also forward a like report to the director upon the conviction of any person of a felony in the commission of which a vehicle was used.

The failure of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

The director shall keep all abstracts received hereunder at the director's office in Olympia and the same shall be open to public inspection during reasonable business hours.

Venue in all district courts shall be before one of the two nearest district judges in incorporated cities and towns nearest to the point the violation allegedly occurred: PROVIDED, That in counties with populations of one hundred twenty-five thousand or more such cases may be tried in the county seat at the request of the defendant.

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish.

Sec. 6. RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and

the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; ~~(and~~

~~— (iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege;)) or~~

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

~~(iii) ((By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving~~

~~notification of the conviction the department shall suspend the offender's license, permit, or privilege; and~~

~~—(iv)) By a court-ordered restriction under RCW 46.20.720.~~

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

~~(iii) ((By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and~~

~~—(iv)) By a court-ordered restriction under RCW 46.20.720; or~~

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred

unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

~~(iii) ((By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of nine hundred days. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and~~

~~—(iv))~~ By a court-ordered restriction under RCW 46.20.720.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

~~(iii) ((By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving~~

~~notification of the conviction the department shall revoke the offender's license, permit, or privilege; and~~

~~—(iv))~~ By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

~~(iii) ((By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; and~~

~~—(iv))~~ By a court-ordered restriction under RCW 46.20.720.

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether the person was driving or in physical control of a vehicle with one or more passengers at the time of the offense.

(5) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(6) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15, or if by reason of the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years.

For purposes of this subsection, the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(7) After expiration of any period of suspension (~~(or)~~), revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

((7)) (8)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

~~((8))~~ (9) For purposes of this section:

(a) "Electronic home monitoring" shall not be considered confinement as defined in RCW 9.94A.030;

(b) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (b)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense.

Sec. 7. RCW 46.65.060 and 1985 c 101 s 2 are each amended to read as follows:

If the department finds that such person is not an habitual offender under this chapter, the proceeding shall be dismissed, but if the department finds that such

person is an habitual offender, the department shall revoke the operator's license for a period of ~~((five))~~ seven years: PROVIDED, That the department may stay the date of the revocation if it finds that the traffic offenses upon which it is based were caused by or are the result of alcoholism and/or drug addiction as evaluated by a program approved by the department of social and health services, and that since his or her last offense he or she has undertaken and followed a course of treatment for alcoholism and/or drug treatment in a program approved by the department of social and health services; such stay shall be subject to terms and conditions as are deemed reasonable by the department. Said stay shall continue as long as there is no further conviction for any of the offenses listed in RCW 46.65.020(1). Upon a subsequent conviction for any offense listed in RCW 46.65.020(1) or violation of any of the terms or conditions of the original stay order, the stay shall be removed and the department shall revoke the operator's license for a period of ~~((five))~~ seven years.

Sec. 8. RCW 46.20.500 and 1997 c 328 s 3 are each amended to read as follows:

No person may drive a motorcycle or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles(~~(, nor may a person drive a motorcycle of a larger engine displacement than that authorized by such special endorsement or by an instruction permit for such category)~~). However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped. No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

Sec. 9. RCW 46.20.505 and 1993 c 115 s 1 are each amended to read as follows:

Every person applying for a special endorsement (~~((or a new category of endorsement))~~) of a driver's license authorizing such person to drive a motorcycle or a motor-driven cycle shall pay an examination fee of two dollars which is not refundable. In addition, the endorsement fee for the initial (~~((or new category))~~) motorcycle endorsement shall be six dollars and the subsequent renewal endorsement fee shall be fourteen dollars. The initial (~~((or new category))~~) and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund.

Sec. 10. RCW 46.20.510 and 1999 c 6 s 25 are each amended to read as follows:

(1) (~~((Categories.—There are three categories for the special motorcycle endorsement of a driver's license. Category one is for motorcycles or motor-driven cycles having an engine displacement of one hundred fifty cubic centimeters or less. Category two is for motorcycles having an engine displacement of five~~

~~hundred cubic centimeters or less. Category three includes categories one and two, and is for motorcycles having an engine displacement of five hundred one cubic centimeters or more.~~

~~(2))~~ **Motorcycle instruction permit.** A person holding a valid driver's license who wishes to learn to ride a motorcycle ~~((or obtain an endorsement of a larger category))~~ may apply for a motorcycle instruction permit. The department may issue a motorcycle instruction permit after the applicant has successfully passed all parts of the motorcycle examination other than the driving test. The director shall collect a two dollar and fifty cent fee for the motorcycle instruction permit or renewal, and deposit the fee in the motorcycle safety education account of the highway safety fund.

~~((3))~~ **(2) Effect of motorcycle instruction permit.** A person holding a motorcycle instruction permit may drive a motorcycle upon the public highways if the person has immediate possession of the permit and a valid driver's license ~~((with current endorsement, if any)).~~ An individual with a motorcyclist's instruction permit may not carry passengers~~((;))~~ and may not operate a motorcycle during the hours of darkness ~~((or on a fully-controlled, limited-access facility, and shall be under the direct visual supervision of a person with a motorcycle endorsement of the appropriate category and at least five years' riding experience)).~~

~~((4))~~ **(3) Term of motorcycle instruction permit.** A motorcycle instruction permit is valid for ninety days from the date of issue.

(a) The department may issue one additional ninety-day permit.

(b) The department may issue a third motorcycle instruction permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

Sec. 11. RCW 46.20.515 and 1982 c 77 s 4 are each amended to read as follows:

The motorcycle endorsement examination ~~((for each displacement category shall))~~ must emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision.

Sec. 12. RCW 46.20.041 and 1999 c 6 s 9 are each amended to read as follows:

(1) If the department has reason to believe that a person is suffering from a physical or mental disability or disease that may affect that person's ability to drive a motor vehicle, the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding the disability or disease he or she is able to safely drive a motor vehicle.

(b) The department may require the person to obtain a statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition.

(i) The ~~((certificate))~~ statement is for the confidential use of the director and the chief of the Washington state patrol and for other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter 42.17 RCW.

(ii) The ~~((certificate))~~ statement may not be offered as evidence in any court except when appeal is taken from the order of the director canceling or withholding a person's driving privilege. However, the department may make the ~~((certificate))~~ statement available to the director of the department of retirement systems for use in determining eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning the disability benefits.

(2) On the basis of the evaluation the department may:

(a) Issue or renew a driver's license to the person without restrictions;

(b) Cancel or withhold the driving privilege from the person; or

(c) Issue a restricted driver's license to the person. The restrictions must be suitable to the licensee's driving ability. The restrictions may include:

(i) Special mechanical control devices on the motor vehicle operated by the licensee;

(ii) Limitations on the type of motor vehicle that the licensee may operate; or

(iii) Other restrictions determined by the department to be appropriate to assure the licensee's safe operation of a motor vehicle.

(3) The department may either issue a special restricted license or may set forth the restrictions upon the usual license form.

(4) The department may suspend or revoke a restricted license upon receiving satisfactory evidence of any violation of the restrictions. In that event the licensee is entitled to a driver improvement interview and a hearing as provided by RCW 46.20.322 or 46.20.328.

(5) Operating a motor vehicle in violation of the restrictions imposed in a restricted license is a traffic infraction.

Sec. 13. RCW 46.20.055 and 1999 c 6 s 11 are each amended to read as follows:

(1) **Driver's instruction permit.** ~~(((a) A person who is at least fifteen and one-half years of age may apply to the department for a driver's instruction permit.))~~ The department may issue a driver's instruction permit ~~((after the))~~ with a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, ~~((and))~~ paid a five-dollar fee~~(-)~~, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

~~((The department may issue a driver's instruction permit to an applicant who))~~ Is at least fifteen years of age ((if he or she)) and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program approved and accredited by the superintendent of public instruction that includes practice driving.

(2) Nonphoto permit fee. An applicant who meets the requirements of subsection (1) of this section other than payment of the five-dollar fee may obtain a driver's instruction permit without a photograph by paying a fee of four dollars.

(3) Waiver of written examination for instruction permit. The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

- (a) A traffic safety education course as defined by RCW 28A.220.020(2); or
- (b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1).

The department may require proof of registration in such a course as it deems necessary.

~~((3))~~ (4) Effect of instruction permit. A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

- (a) The person has immediate possession of the permit; and
- (b) ~~((The seat beside the driver is occupied by))~~ An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

~~((4))~~ (5) Term of instruction permit. A driver's instruction permit is valid for one year from the date of issue.

- (a) The department may issue one additional one-year permit.
- (b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

Sec. 14. RCW 46.20.100 and 1999 c 6 s 16 are each amended to read as follows:

(1) **Application.** The application of a person under the age of eighteen years for a driver's license or a motorcycle endorsement must be signed by a parent or guardian with custody of the minor. If the ~~((minor))~~ person under the age of eighteen has no father, mother, or guardian, then the application must be signed by the minor's employer.

(2) **Traffic safety education requirement.** For a person under the age of eighteen years to obtain a driver's license he or she must meet the traffic safety education requirements of this subsection.

(a) To meet the traffic safety education requirement for a driver's license the applicant must satisfactorily complete a traffic safety education course as defined in RCW 28A.220.020. The course must meet the standards established by the office of the state superintendent of public instruction. The traffic safety education course may be provided by:

- (i) A recognized secondary school; or
- (ii) A commercial driving enterprise that is annually approved by the office of the superintendent of public instruction.

(b) To meet the traffic safety education requirement for a motorcycle endorsement, the applicant must successfully complete a motorcycle safety

education course that meets the standards established by the department of licensing.

(c) The department may waive the traffic safety education requirement for a driver's license if the applicant demonstrates to the department's satisfaction that:

- (i) He or she was unable to take or complete a traffic safety education course;
- (ii) A need exists for the applicant to operate a motor vehicle; and

(iii) He or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property (~~(under rules adopted by)~~).

The department may adopt rules to implement this subsection (2)(e) in concert with the supervisor of the traffic safety education section of the office of the superintendent of public instruction.

(d) The department may waive the traffic safety education requirement if the applicant was licensed to drive a motor vehicle or motorcycle outside this state and provides proof that he or she has had education equivalent to that required under this subsection.

Sec. 15. RCW 46.20.117 and 1999 c 6 s 18 are each amended to read as follows:

(1) **Issuance.** The department shall issue (~~(a resident of the state of Washington)~~) an identicard, containing a picture, if (~~(he or she)~~) the applicant:

- (a) Does not hold a valid Washington driver's license;
- (b) Proves his or her identity as required by RCW 46.20.035; and

(c) Pays the required fee. The fee is four dollars unless an applicant is a recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services. For those persons the fee must be the actual cost of production of the identicard.

(2) **Design and term.** The identicard must:

(a) Be distinctly designed so that it will not be confused with the official driver's license; and

(b) Expire on the fifth anniversary of the applicant's birthdate after issuance.

(3) **Cancellation.** The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.336 (as recodified by chapter 6, Laws of 1999).

Passed the Senate April 24, 1999.

Passed the House April 24, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 275

[Senate Bill 5358]

MOTORCYCLE HANDLEBAR HEIGHT

AN ACT Relating to eliminating motorcycle handlebar height restrictions; and amending RCW 46.61.611.

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

Sec. 1. RCW 46.61.611 and 1967 c 232 s 6 are each amended to read as follows:

No person shall operate on a public highway a motorcycle in which the handlebars or grips are more than ~~((fifteen))~~ thirty inches higher than the seat or saddle for the operator.

Passed the Senate April 20, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 276

[Senate Bill 5382]

SCENIC VISTAS ACT—PERMITS

AN ACT Relating to the Scenic Vistas Act; and amending RCW 47.42.120, 47.42.130, and 47.42.911.

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

Sec. 1. RCW 47.42.120 and 1984 c 7 s 232 are each amended to read as follows:

Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. The application shall be accompanied by a fee ~~((of ten dollars))~~ established by department rule to be deposited with the state treasurer to the credit of the motor vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and ~~((shall be renewed annually upon payment of this fee for the new year without the filing of a new application.))~~ accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification.

Sec. 2. RCW 47.42.130 and 1984 c 7 s 233 are each amended to read as follows:

Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than ~~((six*))~~ sixteen square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter.

Sec. 3. RCW 47.42.911 and 1971 ex.s. c 62 s 19 are each amended to read as follows:

This ~~((act))~~ chapter may be cited as the "Scenic Vistas Act ~~((of 1971))~~."

Passed the Senate April 22, 1999.

Passed the House April 13, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 277

[Substitute Senate Bill 5706]

LICENSE FRAUD—PENALTIES

AN ACT Relating to the decriminalization of license fraud violations and establishing a license fraud task force in the Washington state patrol; amending RCW 47.68.240, 47.68.255, 82.48.020, 82.49.010, 82.50.400, 88.02.118, and 82.32.090; reenacting and amending RCW 46.16.010; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to decriminalize license fraud and impose stronger civil penalties upon residents who defraud the state, thereby enhancing compliance with state registration laws and increasing state revenues. To further enhance enforcement and collection efforts, the legislature intends to create a license fraud task force within the Washington state patrol.

NEW SECTION. Sec. 2. The task force consists of staff from the Washington state patrol, the department of revenue, and the attorney general's office. The task force personnel are:

- (1) One Washington state patrol sergeant, who has overall responsibility to coordinate the task force;
 - (2) Three Washington state patrol detectives, to investigate license fraud;
 - (3) One department of revenue tax discovery agent, to assess and recover delinquent tax, penalties, and interest;
 - (4) One assistant attorney general, to provide legal services to the task force;
- and

(5) One clerical support person, for administrative support for the task force as a whole.

NEW SECTION. Sec. 3. A penalty assessed pursuant to RCW 46.16.010 (1)(a) and (2), 47.68.255, or 82.48.020 is due and payable when the person incurring it receives a notice in writing from the state patrol stating the violation and advising the person that the penalty is due. The state patrol may, upon written application for review received within fifteen days from the date of the penalty assessment, remit or mitigate a penalty. Procedures for these actions are governed by chapter 34.05 RCW. The penalty notice has the effect of an agency order.

Sec. 4. RCW 46.16.010 and 1997 c 328 s 2 and 1997 c 241 s 13 are each reenacted and amended to read as follows:

(1) It is ~~((unlawful))~~ a violation for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. ~~((Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred.))~~

(a) Failure to make initial registration of a vehicle before operating it on the highways of this state is a violation of this section. Anyone who violates this section is liable for a penalty of three hundred fifty dollars for each violation in addition to all other penalties provided by law. Persons violating this subsection shall make payment as prescribed in subsection (2)(b) of this section.

(b) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction, which shall not be resolved through the civil process instituted under this section.

(2)(a) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, ~~((evading))~~ to avoid the payment of any tax or license fee imposed in connection with registration, is a ~~((gross misdemeanor punishable as follows:))~~ violation of this section, and violators are liable for a monetary penalty not less than one thousand dollars but not more than ten thousand dollars for each violation.

~~((a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;))~~

(b) ~~((For a second or subsequent offense, up to one year in the county jail and a fine equal to four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;))~~ The penalty provided in subsection (1)(a) of this section and this subsection is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. The state patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue an action to recover the penalty upon such terms it deems

proper and may ascertain the facts in a manner and under rules it deems proper. If the amount of the penalty is not paid to the state patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the 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 any other county in which the violator resides or does business, to recover the penalty, administrative fees, and attorneys' fees and costs incurred in recovering the penalties. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund for the license fraud task force.

~~(c) ((For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed shall be deposited in the vehicle licensing fraud account created in the state treasury;~~

~~—(d))~~ The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(3) These provisions shall not apply to the following vehicles:

(a) Electric-assisted bicycles;

(b) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(c) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(d) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(e) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers,

leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(4) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

Sec. 5. RCW 47.68.240 and 1993 c 238 s 3 are each amended to read as follows:

Any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, shall be guilty of a misdemeanor and shall be punished as provided under chapter 9A.20 RCW, except that any person violating any of the provisions of RCW 47.68.220(;) or 47.68.230(~~or~~ ~~47.68.255~~)) shall be guilty of a gross misdemeanor which shall be punished as provided under chapter 9A.20 RCW. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within

the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

Sec. 6. RCW 47.68.255 and 1996 c 184 s 3 are each amended to read as follows:

(1) A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country (~~(evading)~~) avoiding the Washington aircraft (~~(excise tax is guilty of a gross misdemeanor)~~) taxes, commits a violation of this section and is liable for those unpaid taxes and for a monetary penalty not less than one thousand dollars but not more than ten thousand dollars for each violation. (~~(For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed shall be deposited in the manner provided under RCW 46.16.010(2).)~~)

(2) The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. The state patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue an action to recover the penalty upon such terms it deems proper and may ascertain the facts in a manner and under rules it deems proper. If the amount of the penalty is not paid to the state patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the 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 any other county in which the violator does business, to recover the penalty, administrative fees, and attorneys' fees. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund for the license fraud task force. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

Sec. 7. RCW 82.48.020 and 1993 c 238 s 5 are each amended to read as follows:

(1) An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel shall constitute the necessary evidence of aircraft use or intended use. The tax shall be collected annually or under a staggered collection schedule as required by the secretary by rule. No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such aircraft has already been paid for the year in which transfer of

ownership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.

(2)(a) ~~Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the Washington aircraft ((excise tax are liable for such unpaid excise tax)) taxes, violate this section and are liable for a monetary penalty of not less than one thousand dollars but not more than ten thousand dollars for each violation. ((A violation of this subsection is a gross misdemeanor.))~~

(b) The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. The state patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue an action to recover the penalty upon such terms it deems proper and may ascertain the facts in a manner and under rules it deems proper. If the amount of the penalty is not paid to the state patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the 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 any other county in which the violator resides or does business, to recover the penalty, administrative fees, and attorneys' fees. In all such actions, the procedure and rules of evidence are the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund for the license fraud task force.

(3) The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

~~((3))~~ (4) Except as provided under subsections (1) and (2) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW.

Sec. 8. RCW 82.49.010 and 1993 c 238 s 6 are each amended to read as follows:

(1) An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater. Violation of this subsection is a misdemeanor.

(2)(a) A person((s)) who ((are)) is required under chapter 88.02 RCW to register a vessel in this state and who registers the vessel in another state or foreign country and avoid§ the Washington watercraft ((excise tax are guilty of a gross misdemeanor and are liable for such unpaid excise tax)) taxes, violates this section and is liable for those taxes and a monetary penalty not less than one thousand

~~dollars but not more than ten thousand dollars for each violation. ((The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.))~~

(b) The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. The state patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue an action to recover the penalty upon such terms it deems proper and may ascertain the facts in a manner and under rules it deems proper. If the amount of the penalty is not paid to the state patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the 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 any other county in which the violator resides or does business, to recover the penalty, administrative fees, and attorneys' fees. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund for the license fraud task force.

(3) The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.050. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately preceding year. The excise tax on vessels required to be registered in this state on June 30, 1983, shall be paid by June 30, 1983.

Sec. 9. RCW 82.50.400 and 1993 c 238 s 7 are each amended to read as follows:

(1) An annual excise tax is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. The excise tax hereby imposed shall be due and payable to the department of licensing or its agents at the time of registration of a travel trailer or camper. Whenever an application is made to the department of licensing or its agents for a license for a travel trailer or camper there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter, and no dealer's license or license plates, and no license or license plates for a travel trailer or camper may be issued unless such tax is paid in full. No additional tax shall be imposed under this chapter upon any travel trailer or camper

upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such travel trailer or camper has already been paid for the registration year or fractional part thereof in which such transfer occurs. Violation of this subsection is a ~~((misdemeanor))~~ violation of RCW 46.16.010 (1)(a) and (2), and penalties apply.

(2) Persons who are required to license travel trailers or campers under chapter 46.16 RCW and who license travel trailers or campers in another state or foreign country to avoid the Washington travel trailer or camper tax are ~~((guilty of a gross misdemeanor and are liable for such unpaid excise tax))~~ in violation of RCW 46.16.010 (1)(a) and (2), and penalties apply. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

Sec. 10. RCW 88.02.118 and 1996 c 184 s 4 are each amended to read as follows:

~~(1)(a) It is a ((gross misdemeanor punishable as provided under chapter 9A.20 RCW)) violation~~ for any person owning a vessel subject to taxation under chapter 82.49 RCW to register a vessel in another state to avoid Washington state vessel ((excise tax)) taxes required under chapter 82.49 RCW or to obtain a vessel dealer's registration for the purpose of ((evading excise tax)) avoiding taxes on vessels under chapter 82.49 RCW. ((For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed shall be deposited in the manner provided under RCW 46.16.010(2).))

(b) The monetary penalty is not less than one thousand dollars but not more than ten thousand dollars for each violation.

(2) The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. The state patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue an action to recover the penalty upon such terms it deems proper and may ascertain the facts in a manner and under rules it deems proper. If the amount of the penalty is not paid to the state patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the 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 any other county in which the violator resides or does business, to recover the penalty, administrative fees, and attorneys' fees. In all such actions, the procedure and rules of evidence are the same as an ordinary civil action

except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund for the license fraud task force.

Sec. 11. RCW 82.32.090 and 1996 c 149 s 15 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than five dollars.

(2) If payment of any tax assessed by the department of revenue is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. No penalty so added shall be less than five dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(5)(a) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(b) There is a rebuttable presumption of a tax deficiency and intent to avoid and evade the tax under the motor vehicle excise tax under chapter 82.44 RCW, the aircraft excise tax under chapter 82.48 RCW, the watercraft excise tax under chapter 82.49 RCW, the trailers and campers excise tax under chapter 82.50 RCW, or use tax under chapter 82.12 RCW, if there is a finding resulting from a proceeding brought under RCW 46.16.010, 47.68.255, 82.48.020, 82.49.010, or 88.02.118, that the person failed to properly register or license a motor vehicle, an aircraft, a watercraft, a trailer, or a camper.

(6) The aggregate of penalties imposed under subsections (1), (2), and (3) of this section shall not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(7) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(8) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue, and that has a statutorily defined due date.

Passed the Senate April 21, 1999.

Passed the House April 6, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 278

[Substitute Senate Bill 5666]

VEHICLE WRECKERS—ACQUISITIONS BY

AN ACT Relating to acquisition of vehicles and parts by vehicle wreckers; and amending RCW 46.80.010, 46.80.080, and 46.80.090.

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

Sec. 1. RCW 46.80.010 and 1995 c 256 s 4 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Vehicle wrecker" means every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or who buys or sells integral second-hand parts of component material thereof, in whole or in part, or who deals in second-hand vehicle parts.

(2) "Core" means a major component part received by a vehicle wrecker in exchange for a like part sold by the wrecker, is not resold as a major component part except for scrap metal value or for remanufacture, and the wrecker maintains records for three years from the date of acquisition to identify the name of the person from whom the core was received.

(3) "Established place of business" means a building or enclosure which the vehicle wrecker occupies either continuously or at regular periods and where his books and records are kept and business is transacted and which must conform with zoning regulations.

~~((3))~~ (4) "Interim owner" means the owner of a vehicle who has the original certificate of ownership for the vehicle, which certificate has been released by the person named on the certificate and assigned to the person offering to sell the vehicle to the wrecker.

(5) "Major component part" includes at least each of the following vehicle parts: (a) Engines and short blocks; (b) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; (l) bumper; (m) fender; and (n) airbag. The director may supplement this list by rule.

~~((4))~~ (6) "Wrecked vehicle" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state.

Sec. 2. RCW 46.80.080 and 1995 c 256 s 10 are each amended to read as follows:

(1) Every vehicle wrecker shall maintain books or files in which the wrecker shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by the wrecker; and

(b) Every major component part acquired by the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom the wrecker purchased the vehicle or part. Major component parts other than cores shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle that is the source of a major component part other than a core:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased;

(g) Disposition of the motor and chassis;

(h) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) The records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the licensee, identifying the seller by name, address, and date of sale.

(4) The records shall be maintained by the licensee at his or her established place of business for a period of three years from the date of acquisition.

(5) The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the (~~motor~~) vehicle wrecker's place of business or to other places designated by the owner of the vehicle or his or her representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

(7) Failure to comply with this section is a gross misdemeanor.

Sec. 3. RCW 46.80.090 and 1995 c 256 s 11 are each amended to read as follows:

Within thirty days after acquiring a vehicle, the vehicle wrecker shall furnish a written report to the department. This report shall be in such form as the department shall prescribe and shall be accompanied by evidence of ownership as determined by the department. No vehicle wrecker may acquire a vehicle, including a vehicle from an interim owner, without first obtaining evidence of ownership as determined by the department. For a vehicle from an interim owner, the evidence of ownership may not require that a title be issued in the name of the interim owner as required by RCW 46.12.101. The vehicle wrecker shall furnish a monthly report of all acquired vehicles. This report shall be made on forms

prescribed by the department and contain such information as the department may require. This statement shall be signed by the vehicle wrecker or an authorized representative and the facts therein sworn to before a notary public, or before an officer or employee of the department designated by the director to administer oaths or acknowledge signatures, pursuant to RCW 46.01.180.

Passed the Senate April 22, 1999.

Passed the House April 8, 1999.

Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

CHAPTER 279

[Substitute Senate Bill 6090]

AGRICULTURE COLLEGE LANDS—FUND MANAGEMENT

AN ACT Relating to funding management of agricultural college lands; amending RCW 79.64.030 and 79.64.040; adding a new section to chapter 79.64 RCW; providing an effective date; and declaring an emergency.

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

Sec. I. RCW 79.64.030 and 1993 c 460 s 2 are each amended to read as follows:

Funds in the account derived from the gross proceeds of leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting school lands, university lands, (~~agricultural college lands,~~) scientific school lands, normal school lands, capitol building lands, or institutional lands shall be pooled and expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering all of the trust lands enumerated in this section. Such funds may be used for similar costs and expenses in managing and administering other lands managed by the department provided that such expenditures that have been or may be made on such other lands shall be repaid to the resource management cost account together with interest at a rate determined by the board of natural resources.

Costs and expenses necessarily incurred in managing and administering agricultural college lands shall not be deducted from proceeds derived from the sale of such lands or from the sale of resources that are part of the lands. Costs and expenses incurred in managing and administering agricultural college trust lands shall be funded by appropriation under section 3 of this act.

An accounting shall be made annually of the accrued expenditures from the pooled trust funds in the account. In the event the accounting determines that expenditures have been made from moneys derived from trust lands for the benefit of other lands, such expenditure shall be considered a debt and an encumbrance

against the property benefitted, including property held under chapter 76.12 RCW. The results of the accounting shall be reported to the legislature at the next regular session. The state treasurer is authorized, upon request of the department, to transfer funds between the forest development account and the resource management cost account solely for purpose of repaying loans pursuant to this section.

Sec. 2. RCW 79.64.040 and 1981 2nd ex.s. c 4 s 3 are each amended to read as follows:

The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting public lands, provided that no deduction shall be made from the proceeds from agricultural college lands. Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.01.132 and 79.01.204 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section. The deductions authorized under this section shall in no event exceed twenty-five percent of the total sum received by the department in connection with any one transaction pertaining to public lands other than second class tide and shore lands and the beds of navigable waters, and fifty percent of the total gross proceeds received by the department pertaining to second class tide and shore lands and the beds of navigable waters.

NEW SECTION. **Sec. 3.** A new section is added to chapter 79.64 RCW to read as follows:

The agricultural college trust management account is created in the state treasury. To the account shall be deposited such funds as the legislature directs or appropriates. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the costs of managing the assets of the agricultural school trust.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

Passed the Senate April 15, 1999.

Passed the House April 23, 1999.

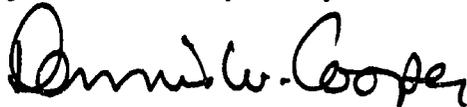
Approved by the Governor May 12, 1999.

Filed in Office of Secretary of State May 12, 1999.

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 1999 regular session (56th Legislature), chapters 1 through 279, respectively, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 17th day of May, 1999.

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 a long, sweeping underline.

DENNIS W. COOPER
Code Reviser

