

2001

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-SEVENTH 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) Vetoes are *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 2001 regular session to be July 22, 2001 (midnight July 21st).

(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 2001 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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CHAPTER 1

[Initiative 713]

ANIMAL TRAPPING

AN ACT Relating to the humane treatment of wildlife and pets; adding new sections to chapter 77.15 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The people of the state of Washington find that this act is necessary in order to protect people and domestic pets and to protect and conserve wildlife from the dangers of cruel and indiscriminate steel-jawed leghold traps and poisons, and to encourage the use of humane methods of trapping when trapping is necessary to ensure public health and safety, protect livestock or property, safeguard threatened and endangered species, or conduct field research on wildlife.

NEW SECTION. Sec. 2. A new section is added to chapter 77.15 RCW to read as follows:

The definitions in this section apply throughout sections 3 through 5 of this act.

(1) "Animal" means any nonhuman vertebrate.

(2) "Body-gripping trap" means a trap that grips an animal's body or body part. Body-gripping trap includes, but is not limited to, steel-jawed leghold traps, padded-jaw leghold traps, Conibear traps, neck snares, and nonstrangling foot snares. Cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps are not considered body-gripping traps.

(3) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental instrumentality.

(4) "Raw fur" means a pelt that has not been processed for purposes of retail sale.

(5) "Animal problem" means any animal that threatens or damages timber or private property or threatens or injures livestock or any other domestic animal.

NEW SECTION. Sec. 3. A new section is added to chapter 77.15 RCW to read as follows:

(1) It is unlawful to use or authorize the use of any steel-jawed leghold trap, neck snare, or other body-gripping trap to capture any mammal for recreation or commerce in fur.

(2) It is unlawful to knowingly buy, sell, barter, or otherwise exchange, or offer to buy, sell, barter, or otherwise exchange the raw fur of a mammal or a mammal that has been trapped in this state with a steel-jawed leghold trap or any other body-gripping trap, whether or not pursuant to permit.

(3) It is unlawful to use or authorize the use of any steel-jawed leghold trap or any other body-gripping trap to capture any animal, except as provided in subsections (4) and (5) of this section.

(4) Nothing in this section prohibits the use of a Conibear trap in water, a padded leghold trap, or a nonstrangling type foot snare with a special permit granted by director under (a) through (d) of this subsection. Issuance of the special permits shall be governed by rules adopted by the department and in accordance with the requirements of this section. Every person granted a special permit to use a trap or device listed in this subsection shall check the trap or device at least every twenty-four hours.

(a) Nothing in this section prohibits the director, in consultation with the department of social and health services or the United States department of health and human services from granting a permit to use traps listed in this subsection for the purpose of protecting people from threats to their health and safety.

(b) Nothing in this section prohibits the director from granting a special permit to use traps listed in this subsection to a person who applies for such a permit in writing, and who establishes that there exists on a property an animal problem that has not been and cannot be reasonably abated by the use of nonlethal control tools, including but not limited to guard animals, electric fencing, or box and cage traps, or if such nonlethal means cannot be reasonably applied. Upon making a finding in writing that the animal problem has not been and cannot be reasonably abated by nonlethal control tools or if the tools cannot be reasonably applied, the director may authorize the use, setting, placing, or maintenance of the traps for a period not to exceed thirty days.

(c) Nothing in this section prohibits the director from granting a special permit to department employees or agents to use traps listed in this subsection where the use of the traps is the only practical means of protecting threatened or endangered species as designated under RCW 77.08.010.

(d) Nothing in this section prohibits the director from issuing a permit to use traps listed in this subsection, excluding Conibear traps, for the conduct of legitimate wildlife research.

(5) Nothing in this section prohibits the United States fish and wildlife service, its employees or agents, from using a trap listed in subsection (4) of this section where the fish and wildlife service determines, in consultation with the director, that the use of such traps is necessary to protect species listed as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

NEW SECTION. Sec. 4. A new section is added to chapter 77.15 RCW to read as follows:

It is unlawful to poison or attempt to poison any animal using sodium fluoroacetate, also known as compound 1080, or sodium cyanide.

NEW SECTION. Sec. 5. A new section is added to chapter 77.15 RCW to read as follows:

Any person who violates section 3 or 4 of this act is guilty of a gross misdemeanor. In addition to appropriate criminal penalties, the director shall revoke the trapping license of any person convicted of a violation of section 3 or 4 of this act. The director shall not issue the violator a trapping license for a period

of five years following the revocation. Following a subsequent conviction for a violation of section 3 or 4 of this act by the same person, the director shall not issue a trapping license to the person at any time.

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.

Originally filed in Office of Secretary of State January 18, 2000.

Approved by the People of the State of Washington in the General Election on November 7, 2000.

CHAPTER 2

[Initiative 722]

TAX REPEAL/LIMITS

AN ACT Relating to limiting taxes; amending RCW 84.55.0101; reenacting and amending RCW 84.55.005; adding a new section to chapter 84.55; adding new sections to chapter 84.36 RCW; creating a new section; and repealing RCW 84.55.092.

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

LIMITING TAXES BY INVALIDATING 1999 TAX INCREASES IMPOSED WITHOUT VOTER APPROVAL

NEW SECTION. Sec. 1. A new section is added to chapter 84.55 RCW to read as follows:

(1) Any tax increase adopted by the state from July 2, 1999, through December 31, 1999, is null and void and of no effect. All taxes collected as a result of such tax increases shall be refunded to the taxpayer.

(2) For the purposes of this section, "tax" includes, but is not necessarily limited to, sales and use taxes; property taxes; business and occupation taxes; fuel taxes; impact fees; license fees; permit fees; water, sewer, and other utility charges, including taxes, rates, and hook-up fees; and any other excise tax, fee, or monetary charge imposed by the state.

(3) For the purposes of this section, "tax" does not include:

(a) Higher education tuition;

(b) Civil and criminal fines and other charges collected in cases of restitution or violation of law or contract; and

(c) The price of goods offered for sale by the state.

(4) For the purposes of this section, "tax increase" includes, but is not necessarily limited to, a new tax, a monetary increase in an existing tax, a tax rate increase, an expansion in the legal definition of a tax base, and an extension of an expiring tax.

(5) For the purposes of this section, "tax increase" does not include taxes approved by a vote of the people.

(6) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself and all its departments and agencies, any city, county, special district, and other political subdivision or governmental instrumentality of or within the state.

LIMITING TAXES BY EXEMPTING VEHICLES FROM PROPERTY TAXES

NEW SECTION. Sec. 2. A new section is added to chapter 84.36 RCW to read as follows:

(1) Vehicles are exempted from property taxes as long as the retail sales tax of chapter 82.08 RCW applies to vehicles.

(2) For purposes of this section, "vehicles" include all vehicles licensed under chapter 46.16 RCW including, but not necessarily limited to, personal and business owned cars, trucks, sport utility vehicles, motorcycles, motor homes, campers, travel trailers, and mobile homes held as inventory.

(3) The purpose of this section is to exempt from property taxes all vehicles previously exempted from property taxes prior to the adoption by the people of Initiative Measure No. 695, the \$30 License Tab Initiative.

LIMITING TAXES BY EXEMPTING INCREASES IN PROPERTY TAX VALUATIONS ABOVE 2% PER YEAR

NEW SECTION. Sec. 3. A new section is added to chapter 84.36 RCW to read as follows:

(1) As long as the sale of property is subject to the real estate excise tax in chapter 82.46 RCW and unless otherwise exempt from property taxes, a person shall be exempt from any legal obligation to pay the portion of property taxes attributable to any increase in value of property (other than for new construction or manufacture) over its 1999 valuation level, plus the lesser of 2% per year or inflation.

(2) As long as construction materials are subject to the retail sales tax of chapter 82.08 RCW, a person shall be exempt from any legal obligation to pay the portion of property taxes on newly constructed or manufactured property after 1999 over the property tax imposed on the owner of a comparable property constructed as of 1999, plus the lesser of 2% per year or inflation.

(3) For purposes of this section:

(a) "Property" means real and personal property;

(h) "1999 valuation level" means the correct valuation shown on the property tax statement in effect on January 1, 1999;

(c) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce in September of the year before the taxes are payable;

(d) "New construction or manufacture" does not include reconstruction after fire or other natural disaster and does not include maintenance or replacement of

existing components, such as roofs, siding, windows, doors, and parts of equipment; and

(e) "Person" means any person or entity which pays property taxes.

(4) This tax exemption is based on:

(a) The need to promote neighborhood preservation, continuity, and stability by limiting the tax burden;

(b) The fact that many property owners have sold their property, or are considering the sale of property, because of the increased tax burden caused by rapid increases in property valuations; and

(c) All property owners are entitled to know that property taxes will be predictable and uniform for every present and future property owner.

NEW SECTION. Sec. 4. A new section is added to chapter 84.36 RCW to read as follows:

(1) Increases in property tax attributable to maintenance improvements made after January 1, 1999, shall be exempt from property taxes. This exemption promotes neighborhood preservation, continuity, and stability.

(2) This section applies as long as the retail sales tax of chapter 82.08 RCW remains in effect.

(3) For purposes of this section, "maintenance improvements" includes:

(a) reconstruction after fire and natural disaster; and

(b) replacement of existing components such as roofs, siding, windows, doors, and painting.

LIMITING TAXES BY LIMITING GROWTH OF PROPERTY TAXES TO 2% PER YEAR

Sec. 5. RCW 84.55.005 and 1997 c 393 s 20 and 1997 c 3 s 201 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce in September of the year before the taxes are payable;

(2) "Limit factor" means:

(a) For taxing districts with a population of less than ten thousand in the calendar year prior to the assessment year, one hundred (~~six~~) two percent;

(b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor under that section or one hundred (~~six~~) two percent;

(c) For all other districts, the lesser of one hundred (~~six~~) two percent or one hundred percent plus inflation; and

(3) "Regular property taxes" has the meaning given it in RCW 84.04.140.

Sec. 6. RCW 84.55.0101 and 1997 c 3 s 204 are each amended to read as follows:

Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of one hundred (~~six~~) two percent or less. In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution under this section. In districts with more than four members, a majority plus one vote must approve an ordinance or resolution under this section. The new limit factor shall be effective for taxes collected in the following year only.

LIMITING TAXES BY REPEALING LAW WHICH ALLOWS "STOCK-PILING" OF FUTURE PROPERTY TAX INCREASES

NEW SECTION. Sec. 7. RCW 84.55.092 (Protection of future levy capacity) and 1998 c 16 s 3, 1988 c 274 s 4, & 1986 c 107 s 3 are each repealed.

CONSTRUCTION CLAUSE

NEW SECTION. Sec. 8. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

SEVERABILITY CLAUSE

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Originally filed in Office of Secretary of State January 31, 2000.

Approved by the People of the State of Washington in the General Election on November 7, 2000.

CHAPTER 3
[Initiative 728]
SCHOOL CLASS SIZES

AN ACT Relating to public education and directing surplus state revenues to provide additional resources to support high standards of achievement for all students through class size reductions; extended learning opportunities for students who need or want additional time in school; investments in educators and their professional development; dedicating unrestricted lottery proceeds to schools; and authorizing school districts to receive funds from the state property tax levy; amending RCW 67.70.240, 84.52.067, 43.135.035, 43.135.045, and 28A.150.380; adding a new section to chapter 28A.505 RCW; adding a new section to chapter 84.52 RCW; creating new sections; and providing effective dates.

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

NEW SECTION. Sec. 1. This act may be known and cited as the K-12 2000 student achievement act.

NEW SECTION. Sec. 2.

GENERAL PURPOSE

The citizens of Washington state expect and deserve great public schools for our generation of school children and for those who will follow. A quality public

education system is crucial for our state's future economic success and prosperity, and for our children and their children to lead successful lives.

The purpose of this act is to improve public education and to achieve higher academic standards for all students through smaller class sizes and other improvements. A portion of the state's surplus general fund revenues is dedicated to this purpose.

In 1993, Washington state made a major commitment to improved public education by passing the Washington education reform act. This act established new, higher standards of academic achievement for all students. It also established new levels of accountability for students, teachers, schools, and school districts. However, the K-12 finance system has not been changed to respond to the new standards and individual student needs.

To make higher student achievement a reality, schools need the additional resources and flexibility to provide all students with more individualized quality instruction, more time, and the extra support that they may require. We need to ensure that curriculum, instruction methods, and assessments of student performance are aligned with the new standards and student needs. The current level of state funding does not provide adequate resources to support higher academic achievement for all students. In fact, inflation-adjusted per-student state funding has declined since the legislature adopted the 1993 education reform act.

The erosion of state funding for K-12 education is directly at odds with the state's "paramount duty to make ample provision for the education of all children...." Now is the time to invest some of our surplus state revenues in K-12 education and redirect state lottery funds to education, as was originally intended, so that we can fulfill the state's paramount duty.

Conditions and needs vary across Washington's two hundred ninety-six school districts. School boards accountable to their local communities should therefore have the flexibility to decide which of the following strategies will be most effective in increasing student performance and in helping students meet the state's new, higher academic standards:

- (1) Major reductions in K-4 class size;
- (2) Selected class size reductions in grades 5-12, such as small high school writing classes;
- (3) Extended learning opportunities for students who need or want additional time in school;
- (4) Investments in educators and their professional development;
- (5) Early assistance for children who need prekindergarten support in order to be successful in school; and
- (6) Providing improvements or additions to facilities to support class size reductions and extended learning opportunities.

REDUCING CLASS SIZE

Smaller classes in the early grades can significantly increase the amount of learning that takes place in the classroom. Washington state now ranks forty-eighth in the nation in its student-teacher ratio. This is unacceptable.

Significant class size reductions will provide our children with more individualized instruction and the attention they need and deserve and will reduce behavioral problems in classrooms. The state's long-term goal should be to reduce class size in grades K-4 to no more than eighteen students per teacher in a class.

The people recognize that class size reduction should be phased-in over several years. It should be accompanied by the necessary funds for school construction and modernization and for high-quality, well-trained teachers.

EXTENDED LEARNING OPPORTUNITIES

Student achievement will also be increased if we expand learning opportunities beyond our traditional-length school day and year. In many school districts, educators and parents want a longer school day, a longer school year, and/or all-day kindergarten to help students improve their academic performance or explore new learning opportunities. In addition, special programs such as before-and-after-school tutoring will help struggling students catch and keep up with their classmates. Extended learning opportunities will be increasingly important as attainment of a certificate of mastery becomes a high school graduation requirement.

TEACHER QUALITY

Key to every student's academic success is a quality teacher in every classroom. Washington state's new standards for student achievement make teacher quality more important than ever. We are asking our teachers to teach more demanding curriculum in new ways, and we are holding our educators and schools to new, higher levels of accountability for student performance. Resources are needed to give teachers the content knowledge and skills to teach to higher standards and to give school leaders the skills to improve instruction and manage organizational change.

The ability of school districts throughout the state to attract and retain the highest quality teaching corps by offering competitive salaries and effective working conditions is an essential element of basic education. The state legislature is responsible for establishing teacher salaries. It is imperative that the legislature fund salary levels that ensure school districts' ability to recruit and retain the highest quality teachers.

EARLY ASSISTANCE

The importance of a child's intellectual development in the first five years has been established by widespread scientific research. This is especially true for children with disabilities and special needs. Providing assistance appropriate to children's developmental needs will enhance the academic achievement of these children in grades K-12. Early assistance will also lessen the need for more expensive remedial efforts in later years.

NO SUPPLANTING OF EXISTING EDUCATION FUNDS

It is the intent of the people that existing state funding for education, including all sources of such funding, shall not be reduced, supplanted, or otherwise adversely impacted by appropriations or expenditures from the student achievement fund created in RCW 43.135.045 or the education construction fund.

INVESTING SURPLUS IN SCHOOLS UNTIL GOAL MET

It is the intent of the people to invest a portion of state surplus revenues in their schools. This investment should continue until the state's contribution to funding public education achieves a reasonable goal. The goal should reflect the state's paramount duty to make ample provision for the education of all children and our citizens' desire that all students receive a quality education. The people set a goal of per-student state funding for the maintenance and operation of K-12 education being equal to at least ninety percent of the national average per-student expenditure from all sources. When this goal is met, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety percent level.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.505 RCW to read as follows:

ACCOUNTABILITY. School districts shall have the authority to decide the best use of student achievement funds to assist students in meeting and exceeding the new, higher academic standards in each district consistent with the provisions of this act.

(1) Student achievement funds shall be allocated for the following uses:

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators, including additional paid time for curriculum and lesson redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extended day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school;

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection.

(2) Annually on or before May 1st, the school district board of directors shall meet at the time and place designated for the purpose of a public hearing on the proposed use of these funds to improve student achievement for the coming year. Any person may appear or by written submission have the opportunity to comment on the proposed plan for the use of these funds. No later than August 31st, as a part of the process under RCW 28A.505.060, each school district shall adopt a plan for the use of these funds for the upcoming school year. Annually, each school district shall provide to the citizens of their district a public accounting of the funds made available to the district during the previous school year under this act, how the funds were used, and the progress the district has made in increasing student achievement, as measured by required state assessments and other assessments deemed appropriate by the district. Copies of this report shall be provided to the superintendent of public instruction and to the academic achievement and accountability commission.

Sec. 4. RCW 67.70.240 and 1997 c 220 s 206 are each amended to read as follows:

The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the ~~((state's general fund))~~ education construction fund and student achievement fund created in RCW 43.135.045. For the transition period from the effective date of this section until and including June 30, 2002, fifty percent of the moneys not otherwise obligated under this section shall be placed in the student achievement fund and fifty percent of these moneys shall be placed in the education construction fund. On and after July 1, 2002, until June 30, 2004, seventy-five percent of these moneys shall be placed in the student achievement fund and twenty-five percent shall be placed in the education construction fund. On and after July 1, 2004, all deposits not otherwise obligated under this section shall be placed in the education construction fund. Moneys in the state lottery account deposited in the education construction fund and the student achievement fund are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this

subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments.

NEW SECTION. Sec. 5. A new section is added to chapter 84.52 RCW to read as follows:

(1) A portion of the proceeds of the state property tax levy shall be distributed to school districts in the amounts and in the manner provided in this section.

(2) The amount of the distribution to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year, and shall be calculated as follows:

(a) Out of taxes collected in calendar years 2001 through and including 2003, an annual amount equal to one hundred forty dollars per each full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on one hundred forty dollars per full-time equivalent student in the school district for each year beginning with the school year 2001-2002.

(b) Out of taxes collected in calendar year 2004, an annual amount equal to four hundred fifty dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on four hundred fifty dollars per full-time equivalent student for each year beginning with the school year 2004-2005. Each subsequent year, the amount deposited shall be adjusted for inflation as defined in RCW 43.135.025(7).

(3) The office of the superintendent of public instruction shall verify the average number of full-time equivalent students in each school district from the previous school year to the state treasurer by August 1st of each year.

NEW SECTION. Sec. 6. Section 5 of this act applies to taxes levied in 2000 for collection in 2001 and thereafter.

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Sec. 7. RCW 84.52.067 and 1967 ex.s. c 133 s 2 are each amended to read as follows:

All property taxes levied by the state for the support of common schools shall be paid into the general fund of the state treasury as provided in RCW 84.56.280, except for the amounts collected under section 5 of this act which shall be directly deposited into the student achievement fund and distributed to school districts as provided in section 5 of this act.

Sec. 8. RCW 43.135.035 and 1994 c 2 s 4 are each amended to read as follows:

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

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

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

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

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

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

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

(4) If the cost of any state program or function is shifted from the state general fund on or after January 1, 1993, to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the office of financial management shall lower the state expenditure limit to reflect the shift. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under section 5 of this act, in support of education or education expenditures.

Sec. 9. RCW 43.135.045 and 1994 c 2 s 3 are each amended to read as follows:

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

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

(3) The emergency reserve fund balance shall not exceed five percent of ~~((biennial))~~ annual general fund--state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer ~~((to the education construction fund hereby created in the treasury))~~ as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

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

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for

the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

Sec. 10. RCW 28A.150.380 and 1995 c 335 s 103 are each amended to read as follows:

(1) The state legislature shall, at each regular session in an odd-numbered year, appropriate from the state general fund for the current use of the common schools such amounts as needed for state support to the common schools during the ensuing biennium as provided in this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.170, and 28A.500.010.

(2) The state legislature shall also, at each regular session in an odd-numbered year, appropriate from the student achievement fund and education construction fund solely for the purposes of and in accordance with the provisions of the student achievement act during the ensuing biennium.

NEW SECTION. Sec. 11. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

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

NEW SECTION. Sec. 13. This act takes effect January 1, 2001, except for section 4 of this act which takes effect July 1, 2001.

Originally filed in Office of Secretary of State March 1, 2000.

Approved by the People of the State of Washington in the General Election on November 7, 2000.

CHAPTER 4

[Initiative 732]

TEACHER SALARIES

AN ACT Relating to an annual cost-of-living increase for K-12 teachers and other school employees and for community and technical college faculty and other technical college employees; adding a new section to chapter 28A.400 RCW; adding new sections to chapter 28B.50 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The Washington Constitution establishes "the paramount duty of the state to make ample provision for the education of all children." Providing quality education for all children in Washington requires well-qualified and experienced teachers and other school employees. However, salaries for educators have not kept up with the increased cost-of-living in the state.

The failure to keep up with inflation threatens Washington's ability to compete with other states to attract first-rate teachers to Washington classrooms and to keep well-qualified educators from leaving for other professions. The state must provide a fair and reasonable cost-of-living increase to help ensure that the state attracts and keeps the best teachers and school employees for the children of Washington.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.400 RCW to read as follows:

(1) School district employees shall be provided an annual salary cost-of-living increase in accordance with this section.

(a) The cost-of-living increase shall be calculated by applying the rate of the yearly increase in the cost-of-living index to any state-funded salary base used in state funding formulas for teachers and other school district employees. Beginning with the 2001-02 school year, and for each subsequent school year, each school district shall be provided a cost-of-living allocation sufficient to grant this cost-of-living increase for the salaries, including mandatory salary-related benefits, of all employees of the district.

(b) A school district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and compensation policies. No later than the end of the school year, each school district shall certify to the superintendent of public instruction that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) Any funded cost-of-living increase shall be included in the salary base used to determine cost-of-living increases for all school employees in subsequent years. For teachers and other certificated instructional staff, the rate of the annual cost-of-living increase funded for certificated instructional staff shall be applied to the base salary used with the state-wide salary allocation schedule established under RCW 28A.150.410 and to any other salary models used to recognize school district personnel costs.

(d) Beginning with the 2001-02 school year, the state shall fully fund the cost-of-living increase in this section as part of its obligation to meet the basic education requirements under Article IX of the Washington Constitution.

(2) For the purposes of this section, "cost-of-living index" means, for any school year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.50 RCW to read as follows:

(1) Academic employees of community and technical college districts shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "academic employee" has the same meaning as defined in RCW 28B.52.020.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, each college district shall receive a cost-of-living allocation sufficient to increase academic employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A college district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each college district shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for academic employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.50 RCW to read as follows:

(1) Classified employees of technical colleges shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "technical college" has the same meaning as defined in RCW 28B.50.030. This section applies to only those classified employees under the jurisdiction of chapter 41.56 RCW.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, each technical college board of trustees shall receive a cost-of-living allocation sufficient to increase classified employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A technical college board of trustees shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the technical college's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each technical

college shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for technical college classified employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section.

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

Originally filed in Office of Secretary of State March 24, 2000.

Approved by the People of the State of Washington in the General Election on November 7, 2000.

CHAPTER 5

[House Bill 2222]

EMERGENT NEEDS

AN ACT Relating to emergent needs; adding a new section to chapter 38.52 RCW; creating a new section; making appropriations; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature declares an emergency caused by a natural disaster, known as the Nisqually earthquake, which occurred on February 28, 2001, as proclaimed by the governor and the president of the United States.

NEW SECTION. Sec. 2. A new section is added to chapter 38.52 RCW to read as follows:

The Nisqually earthquake account is created in the state treasury. Moneys may be placed in the account from tax revenues, budget transfers or appropriations, federal appropriations, gifts, or any other lawful source. Moneys in the account may be spent only after appropriation. Moneys in the account shall be used only to support state and local government disaster response and recovery efforts associated with the Nisqually earthquake.

NEW SECTION. Sec. 3. The sum of one million dollars is appropriated from the emergency reserve fund to the state military department for deposit into the Nisqually earthquake account.

NEW SECTION. Sec. 4. One million dollars of the Nisqually earthquake account—state, representing the state share, and three million dollars of the Nisqually earthquake account—federal, representing the federal share, are appropriated to the state military department for response and recovery costs associated with the Nisqually earthquake.

NEW SECTION. Sec. 5. (1) The legislature declares an emergency for energy for low-income households.

(2) The sum of one million dollars, or as much thereof as may be necessary, is appropriated from the emergency reserve fund to the department of community, trade, and economic development for the fiscal year ending June 30, 2001, for energy assistance under the low-income home energy assistance program.

(3) The sum of four million dollars, or as much thereof as may be necessary, is appropriated from the general fund—federal to the department of community, trade, and economic development for the fiscal year ending June 30, 2001, for energy assistance under the low-income home energy assistance program.

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

Passed the House March 9, 2001.

Passed the Senate March 10, 2001.

Approved by the Governor March 12, 2001.

Filed in Office of Secretary of State March 12, 2001.

CHAPTER 6

[Substitute House Bill 1125]

SALES TAX—LODGING

AN ACT Relating to limiting the maximum combined sales tax rate on lodging; adding a new section to chapter 82.14 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.14 RCW to read as follows:

(1) A local sales and use tax change adopted after December 1, 2000, must provide an exemption for those sales of lodging for which, but for the exemption, the total sales tax rate imposed on sales of lodging would exceed the greater of:

(a) Twelve percent; or

(b) The total sales tax rate that would have applied to the sale of lodging if the sale were made on December 1, 2000.

(2) For the purposes of this section:

(a) "Local sales and use tax change" is defined as provided in RCW 82.14.055.

(b) "Sale of lodging" means the sale of or charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property.

(c) "Total sales tax rate" means the combined rates of all state and local taxes imposed under this chapter and chapters 36.100, 67.28, 67.40, and 82.08 RCW, and any other tax authorized after the effective date of this section if the tax is in the nature of a sales tax collected from the buyer, but excluding taxes imposed under RCW 81.104.170 before December 1, 2000.

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 21, 2001.

Passed the Senate February 20, 2001.

Approved by the Governor March 29, 2001.

Filed in Office of Secretary of State March 29, 2001.

CHAPTER 7

[Engrossed Substitute Senate Bill 5013]

PERSISTENT SEX OFFENDERS

AN ACT Relating to sentencing persistent sex offenders; amending RCW 9.94A.030; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender.

Sec. 2. RCW 9.94A.030 and 2000 c 28 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) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.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 offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670, 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department. 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.715, as established by the commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

(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 release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(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. 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.

(9) "Confinement" means total or partial confinement.

(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.

(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 court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(14) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(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 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 offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(18) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(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.

(20) "Earned release" means earned release from confinement as provided in RCW 9.94A.150.

(21) "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.

(22) "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.

(23) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(24) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(25) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(26) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(27) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

- (e) Controlled substance homicide;
 - (f) Extortion in the first degree;
 - (g) Incest when committed against a child under age fourteen;
 - (h) Indecent liberties;
 - (i) Kidnapping in the second degree;
 - (j) Leading organized crime;
 - (k) Manslaughter in the first degree;
 - (l) Manslaughter in the second degree;
 - (m) Promoting prostitution in the first degree;
 - (n) Rape in the third degree;
 - (o) Robbery in the second degree;
 - (p) Sexual exploitation;
 - (q) Vehicular assault;
 - (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
 - (s) Any other class B felony offense with a finding of sexual motivation;
 - (t) Any other felony with a deadly weapon verdict under RCW 9.94A.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.
- (28) "Nonviolent offense" means an offense which is not a violent offense.
- (29) "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.
- (30) "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.

(31) "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 (31)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

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

(33) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(34) "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.

(35) "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.

(36) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

(37) "Sex offense" means:

(a) A felony that is a violation of:

(i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) RCW 9A.64.020;

(iii) RCW 9.68A.090; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

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

(38) "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.

(39) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(40) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(41) "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.

(42) "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.

(43) "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.

(44) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault; and

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

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

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

(45) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.135.

(46) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 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.

(47) "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.

Passed the Senate March 6, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 8

[Substitute Senate Bill 5015]

BORDER AREAS

AN ACT Relating to the definition of border area; and amending RCW 66.08.195 and 66.08.196.

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

Sec. 1. RCW 66.08.195 and 1995 c 159 s 2 are each amended to read as follows:

For the purposes of this chapter:

(1) "Border area" means any incorporated city or town, or unincorporated area, located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and 66.08.196.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year.

Sec. 2. RCW 66.08.196 and 1997 c 451 s 4 are each amended to read as follows:

Distribution of funds to border areas under RCW 66.08.190 and 66.24.290 (1)(a) and (4) shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area (~~that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border~~) shall be made to the county in which such an area is located and may only be spent on services provided to that area.

Passed the Senate March 5, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 9

[Senate Bill 5022]

SALMON RECOVERY FUNDING BOARD—REPORTING

AN ACT Relating to the salmon recovery funding board's reporting of financial affairs; and amending RCW 42.17.2401.

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

Sec. 1. RCW 42.17.2401 and 1996 c 186 s 504 are each amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, ~~(the administrator of the office of marine safety,)~~ the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of

health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, salmon recovery funding board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission.

Passed the Senate March 13, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 10

[Senate Bill 5038]

COMMUNITY SUPERVISION, SENTENCING

AN ACT Relating to reorganization of, and technical, clarifying, nonsubstantive amendments to, community supervision and sentencing provisions; amending RCW 9.94A.660 and 9.94A.715; reenacting and amending RCW 9.94A.145; reenacting RCW 9.94A.120; 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. It is the intent of the legislature to incorporate into the reorganization of chapter 9.94A RCW adopted by chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the 2000 legislative session that did not take cognizance of the reorganization. In addition, it is the intent of the legislature to correct any additional incorrect cross-references and to simplify the codification of provisions within chapter 9.94A RCW.

The legislature does not intend to make, and no provision of this act may be construed as making, a substantive change in the sentencing reform act.

Sec. 2. RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and 2000 c 28 s 5 are each reenacted to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.310;

(ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

(iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

(iv) RCW 9.94A.383, relating to community custody for offenders whose term of confinement is one year or less;

(v) RCW 9.94A.560, relating to persistent offenders;

(vi) RCW 9.94A.590, relating to mandatory minimum terms;

(vii) RCW 9.94A.650, relating to the first-time offender waiver;

(viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(x) RCW 9.94A.390, relating to exceptional sentences;

(xi) RCW 9.94A.400, relating to consecutive and concurrent sentences.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more

than one year of confinement; community 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 RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.390.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145.

(5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.140 and 9.94A.142.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) 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.

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

(11) 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, community placement, or community

custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

Sec. 3. RCW 9.94A.145 and 2000 c 226 s 4 and 2000 c 28 s 31 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, restitution shall be paid prior to any payments of other monetary obligations. 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.

(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 issued immediately. 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) Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These

remedies include enforcement 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(6) or 9.94A.142(6) to a victim of rape of a child or a 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(6) and 9.94A.142(6). All other legal financial obligations for an offense committed prior to July 1, 2000, 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 ends later. 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. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department of corrections shall supervise the offender's compliance with payment of the legal financial obligations for ten years following the entry of the judgment and sentence, or ten years following the offender's release from total confinement, whichever period ends later. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.

(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 respond truthfully and honestly 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 all documents 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. During the period of supervision, the department may require the offender 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 respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, 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 purpose 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 for noncompliance as provided in RCW 9.94A.200, 9.94A.205, or 9.94A.207.

(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.

(13) Nothing in this chapter 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.

Sec. 4. RCW 9.94A.660 and 2000 c 28 s 19 are each amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of 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);

(b) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(c) 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

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(2) If the standard sentence range is greater than one year and the sentencing court determines that the offender is eligible for this alternative and that the offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence 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 sentence 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.

The court shall also impose:

(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate 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;

(b) Crime-related prohibitions including a condition not to use illegal controlled substances; ~~(and)~~

(c) A requirement to submit to urinalysis or other testing to monitor that status; and

(d) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

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:

(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 court;
- (vii) Such other conditions as the court may require such as affirmative conditions.

(3) If the offender violates any of the sentence conditions in subsection (2) of this section or is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department unless waived by the offender.

(a) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(b) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(4) 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.

(5) 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 court and shall be subject to all rules relating to earned 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 court. 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 release time.

Sec. 5. RCW 9.94A.715 and 2000 c 28 s 25 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for a sex offense, a violent offense, any crime against persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW (~~not sentenced under RCW 9.94A.660~~), 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 established under RCW 9.94A.040 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))~~; (a) Upon completion of the term of confinement ~~((or))~~; (b) 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); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). 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 subsection (6) of this section.

(b) 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 under RCW 9.94A.720. 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. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) 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.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section 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.

(4) Except for terms of community custody under RCW 9.94A.670, 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.

(5) 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.

(6) 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.

(7) 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: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

NEW SECTION. Sec. 6. The code reviser shall recodify sections within chapter 9.94A RCW, and correct any cross-references to any such recodified sections, as necessary to simplify the organization of chapter 9.94A RCW.

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 July 1, 2001.

Passed the Senate February 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 11

[Senate Bill 5047]

CORRECTIONS--AUTHORITY OVER PERSONS AT CORRECTIONAL FACILITIES

AN ACT Relating to the authority of the department of corrections to detain, search, or remove persons who enter correctional facilities or institutional grounds; adding a new section to chapter 72.09 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 72.09 RCW to read as follows:

(1) An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use reasonable force to detain, search, or remove persons who enter or remain without permission within a correctional facility or institutional grounds or whenever, upon probable cause, it appears to such employee that a person has committed or is attempting to commit a crime, or possesses contraband within a correctional facility or institutional grounds. Should any person be detained, the department shall immediately notify a local law enforcement agency having jurisdiction over the correctional facility or institutional grounds of the detainment. The department is authorized to detain the

person for a reasonable time to search the person and confiscate any contraband, and until custody of the person and any illegal contraband can be transferred to a law enforcement officer when appropriate. An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use that force necessary in the protection of persons and properties located within the confines of the correctional facility or institutional grounds.

(2) The rights granted in subsection (1) of this section are in addition to any others that may exist by law including, but not limited to, the rights granted in RCW 9A.16.020.

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 6, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 12

[Senate Bill 5048]

MENTAL HEALTH—LESS RESTRICTIVE ALTERNATIVE COMMITMENTS

AN ACT Relating to less restrictive alternative mental health commitments; and amending RCW 71.05.285.

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

Sec. 1. RCW 71.05.285 and 1997 c 112 s 23 are each amended to read as follows:

~~((For the purposes of continued))~~ In determining whether an inpatient or less restrictive alternative commitment under the process provided in RCW 71.05.280 and 71.05.320(2) is appropriate, ~~((in determining whether or not the person is gravely disabled;))~~ great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) Repeated hospitalizations; or (2) repeated peace officer interventions resulting in juvenile offenses, criminal charges, diversion programs, or jail admissions. Such evidence may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety.

Passed the Senate February 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 13

[Engrossed Senate Bill 5051]

CHEMICAL DEPENDENCY

AN ACT Relating to chemical dependency; amending RCW 70.96A.020, 70.96A.050, and 70.96A.140; and adding a new section to chapter 70.96A RCW.

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

Sec. 1. RCW 70.96A.020 and 1998 c 296 s 22 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means;

(a) Alcoholism ((or)); (b) drug addiction((:)); or (c) dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(7) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other ~~((drugs))~~ psychoactive chemicals or "gravely disabled" means that a person, as a result of the use of alcohol or other ~~((drugs))~~ psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "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 more than one year, in a mental health facility, or a long-term alcoholism or drug treatment facility, or in confinement.

(14) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, ~~((has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and))~~ is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

~~((14))~~ (15) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

~~((15))~~ (16) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

~~((16))~~ (17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

~~((17))~~ (18) "Likelihood of serious harm" means ~~((either))~~:

(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 one's self; ~~((b) a substantial risk that))~~ (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or ~~((c) a substantial risk that))~~ (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

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

~~((18))~~ (19) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the worsening of chemical dependency conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

~~((19))~~ (20) "Minor" means a person less than eighteen years of age.

~~((20))~~ (21) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

~~((21))~~ (22) "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.

~~((22))~~ (23) "Person" means an individual, including a minor.

~~((23))~~ (24) "Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

~~((24))~~ (25) "Secretary" means the secretary of the department of social and health services.

~~((25))~~ (26) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

~~((26))~~ (27) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

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

Sec. 2. RCW 70.96A.050 and 1989 c 270 s 6 are each amended to read as follows:

The department shall:

(1) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics or other drug addicts and their families, persons incapacitated by alcohol ((~~and~~)) or other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics or other drug addicts, persons incapacitated by alcohol ((~~and~~)) or other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics or other drug addicts, persons incapacitated by alcohol ((~~and~~)) or other psychoactive chemicals, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts, persons incapacitated by alcohol ((~~and~~)) or other psychoactive chemicals, and intoxicated persons, and serve as a clearing house for information relating to alcoholism or other drug addiction;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and other drug addiction, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(12) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment for employees of state and local governments and businesses and industries in the state;

(13) Use the support and assistance of interested persons in the community to encourage alcoholics and other drug addicts voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism and other drug addiction as a covered illness; and

(17) Organize and sponsor a statewide program to help court personnel, including judges, better understand the disease of alcoholism and other drug addiction and the uses of chemical dependency treatment programs.

Sec. 3. RCW 70.96A.140 and 1995 c 312 s 49 are each amended to read as follows:

(1) When a designated chemical dependency specialist receives information alleging that a person (~~is incapacitated~~) presents a likelihood of serious harm or is gravely disabled as a result of chemical dependency, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court (~~or~~), district court, or in another court permitted by court rule.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to either a county designated mental health professional or an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and (~~is incapacitated~~) presents a likelihood of serious harm or is gravely disabled by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification, sobering services, or chemical dependency treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more sustained treatment program, or that the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose commitment is sought has refused to submit to

a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.050, in which case the hearing shall be held within seventy-two hours of the filing of the petition: **PROVIDED, HOWEVER,** That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: **PROVIDED FURTHER,** That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the

petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is chemically dependent and likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a chemically dependent person committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no

more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

NEW SECTION. Sec. 4. A new section is added to chapter 70.96A RCW to read as follows:

The county alcoholism and other drug addiction program coordinator may designate the county designated mental health professional to perform the detention and commitment duties described in RCW 70.96A.120 and 70.96A.140.

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

Passed the Senate March 7, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 14

[Engrossed Substitute Senate Bill 5052]

TRUST AND ESTATE DISPUTE RESOLUTION

AN ACT Relating to technical corrections to trust and estate dispute resolution; and amending RCW 11.96A.100, 11.96A.230, 11.96A.250, 11.96A.300, and 11.96A.310.

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

Sec. 1. RCW 11.96A.100 and 1999 c 42 s 303 are each amended to read as follows:

Unless rules of court require or this title ((requires)) provides otherwise, or unless a court orders otherwise:

(1) A judicial proceeding under RCW 11.96A.090 is to be commenced by filing a petition with the court;

(2) A summons must be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of court, however, if the

(6) Proceedings under this chapter are subject to the mediation and arbitration provisions of this chapter. Except as specifically provided in RCW 11.96A.310, 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.

Sec. 2. RCW 11.96A.230 and 1999 c 42 s 403 are each amended to read as follows:

(1) ~~((If a special representative has not commenced a proceeding for approval of the agreement under RCW 11.96A.240;))~~ 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))~~ only with 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.))~~ The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. 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 _____ NOTICE OF FILING OF
OF CASE _____ 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.))~~

Sec. 3. RCW 11.96A.250 and 1999 c 42 s 405 are each amended to read as follows:

(1)(a) The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and: (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) In appointing the special representative the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the personal representative or trustee and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence, however, the court may consider any interests that the nominating fiduciary may have in the estate or trust in making the determination.

(c) 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 shall be verified. The petition and order appointing the special representative may be in the following form:

CAPTION
OF CASE

PETITION FOR APPOINTMENT
OF SPECIAL REPRESENTATIVE
UNDER RCW 11.96A.250

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with RCW 11.96A.250 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 RCW 11.96A.250.

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. Special Representative. The nominated special representative . . . is 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 nominated special representative does not have an interest in the affected estate or trust and is not related to any person interested in the estate or trust. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. 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 RCW 11.96A.210 through 11.96A.250 would be in the best interests of the (estate) (trust) and the beneficiaries.

~~((5:))~~ 6. 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 RCW 11.96A.250.

DATED this . . . day of . . . , . . .

.....
(Petitioner or petitioner's
legal representative)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED 2000. at Washington.

.....
(Petitioner or other person
having knowledge)

CAPTION
OF CASE

ORDER FOR APPOINTMENT
OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) 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 RCW 11.96A.250 as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in RCW 11.96A.250. 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 RCW 11.96A.250.

DONE IN OPEN COURT this . . . day of . . . , . . .

.....
JUDGE/COURT COMMISSIONER

(2) Upon appointment by the court, the special representative shall file a certification made under penalty of perjury in accordance with RCW 9A.72.085 that he or she (a) is not interested in the estate or trust; (b) is not related to any person interested in the estate or trust; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, 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))~~ (4) 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 RCW 11.96A.070(3)(c)(i).

Sec. 4. RCW 11.96A.300 and 1999 c 42 s 505 are each amended to read as follows:

(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 RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 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, RCW 11.96A.300(4) 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 RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 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 RCW 11.96A.300(3). 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 RCW 11.96A.080 through 11.96A.200, 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 RCW (~~11.96A.090~~) 11.96A.220.

(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 RCW 11.96A.320, or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise.

Sec. 5. RCW 11.96A.310 and 1999 c 42 s 506 are each amended to read as follows:

(1) When arbitration available. Arbitration under RCW 11.96A.260 through 11.96A.320 is available only if:

(a) A party has first petitioned for mediation under RCW 11.96A.300 and such mediation has been concluded;

(b) The court has determined that mediation under RCW 11.96A.300 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 RCW 11.96A.300; 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 RCW 11.96A.300, 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 RCW 11.96A.300(3), 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 RCW 11.96A.310

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under RCW 11.96A.310:

(State nature of matter)

The matter must be resolved using the arbitration procedures of RCW 11.96A.310 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, RCW 11.96A.310 requires you to furnish to all other parties or the parties' virtual representatives a list of acceptable ~~((mediators))~~ arbitrators 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 RCW 11.96A.300.

(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 RCW 11.96A.320, 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 RCW 11.96A.290 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.))~~ Promptly after the issuance of the decision, the arbitrator shall serve each of the parties to the proceedings with a copy of the written arbitration decision. Proof of service shall be filed with the court. Service shall be made in conformity with CR 5(b) of the rules for superior court.

(8) Arbitration decision may be filed with the court ~~((; appeal))~~. ~~The arbitrator or 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))~~ at any time after its issuance. Notice of such filing shall be promptly given to each party to the arbitration proceedings.

(9) Appeal. (a) The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact. The notice of appeal must be filed within thirty days after the date on which the decision was served on the party filing the notice of appeal. A trial de novo shall then be held, including a right to jury, if demanded.

(b) If an appeal is not filed within the time provided in (a) of this subsection, the arbitration decision is conclusive and binding on all parties. If the arbitrator's decision has been filed with the clerk of the superior court, a judgment shall be entered and may be presented to the court by any party on ten days' prior notice. The judgment when entered shall have the same force and effect as judgments in civil actions.

(10) 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 RCW 11.96A.150 or any other similar provision.

Passed the Senate February 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 15

[Senate Bill 5252]

COURTS OF LIMITED JURISDICTION—VENUE

AN ACT Relating to venue for courts of limited jurisdiction; and amending RCW 3.66.070.

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

Sec. 1. RCW 3.66.070 and 2000 c 111 s 4 are each amended to read as follows:

(1) All criminal actions shall be brought in the district where the alleged violation occurred: PROVIDED, That ~~((+))~~ (a) the prosecuting attorney may file felony cases in the district in which the county seat is located, ~~((2))~~ (b) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, ~~((3))~~ (c) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while under the influence of intoxicating liquor or any drug and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred, and ~~((4))~~ (d) a district court participating in the program established by the office of

the administrator for the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program.

(2) In the event of an emergency created by act of nature, civil unrest, technological failure, or other hazardous condition, temporary venue for court of limited jurisdiction matters may be had in a court district not impacted by the emergency. Such emergency venue is appropriate only for the duration of the emergency.

(3) A criminal action commenced under a local ordinance is deemed to be properly heard by the court of original jurisdiction even though the hearing may take place by video or other electronic means as approved by the supreme court and the defendant is appearing by an electronic method from a location outside the court's geographic jurisdiction or boundaries.

Passed the Senate March 9, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 16

[Engrossed Senate Bill 5258]

HEALTH CARE INFORMATION—RECORDS

AN ACT Relating to disclosure of health care information; and amending RCW 70.24.084 and 70.02.150.

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

Sec. 1. RCW 70.24.084 and 1999 c 391 s 4 are each amended to read as follows:

(1) Any person aggrieved by a violation of this chapter shall have a right of action in superior court and may recover for each violation:

(a) Against any person who negligently violates a provision of this chapter, one thousand dollars, or actual damages, whichever is greater, for each violation.

(b) Against any person who intentionally or recklessly violates a provision of this chapter, ten thousand dollars, or actual damages, whichever is greater, for each violation.

(c) Reasonable attorneys' fees and costs.

(d) Such other relief, including an injunction, as the court may deem appropriate.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) Nothing in this chapter limits the rights of the subject of a test for a sexually transmitted disease to recover damages or other relief under any other applicable law.

(4) Nothing in this chapter may be construed to impose civil liability or criminal sanction for disclosure of a test result for a sexually transmitted disease in accordance with any reporting requirement for a diagnosed case of sexually transmitted disease by the department or the centers for disease control of the United States public health service.

(5) It is a negligent violation of this chapter to cause an unauthorized communication of confidential sexually transmitted disease information by facsimile transmission or otherwise communicating the information to an unauthorized recipient when the sender knew or had reason to know the facsimile transmission telephone number or other transmittal information was incorrect or outdated.

Sec. 2. RCW 70.02.150 and 1991 c 335 s 701 are each amended to read as follows:

A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

Reasonable safeguards shall include affirmative action to delete outdated and incorrect facsimile transmission or other telephone transmittal numbers from computer, facsimile, or other data bases. When health care information is transmitted electronically to a recipient who is not regularly transmitted health care information from the health care provider, the health care provider shall verify that the number is accurate prior to transmission.

Passed the Senate March 12, 2001.
Passed the House April 4, 2001.
Approved by the Governor April 13, 2001.
Filed in Office of Secretary of State April 13, 2001.

CHAPTER 17
[House Bill 1280]
HIT AND RUN

AN ACT Relating to ranking the crime of hit and run; reenacting and amending RCW 9.94A.320; and prescribing penalties.

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

Sec. 1. RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and 2000 c 66 s 2 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)

- XIII Malicious explosion 2 (RCW 70.74.280(2))
Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)
- XI Manslaughter 1 (RCW 9A.32.060)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Malicious explosion 3 (RCW 70.74.280(3))
Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- IX Assault of a Child 2 (RCW 9A.36.130)
Controlled Substance Homicide (RCW 69.50.415)
Explosive devices prohibited (RCW 70.74.180)
Hit and Run—Death (RCW 46.52.020(4)(a))
Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
Malicious placement of an explosive 2 (RCW 70.74.270(2))
Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII
 - Arson 1 (RCW 9A.48.020)
 - Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
 - ~~((Hit and Run—Death (RCW 46.52.020(4)(a))))~~
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
 - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
 - Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
 - Theft of Anhydrous Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII
 - Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))

- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- 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))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment I (RCW 9A.42.020)
- Custodial Sexual Misconduct I (RCW 9A.44.160)

- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)

- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- Malicious Harassment (RCW 9A.36.080)
- 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))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
- Malicious Injury to Railroad Property (RCW 81.60.070)

- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II
 - Computer Trespass 1 (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)
 - Malicious Mischief 1 (RCW 9A.48.070)
 - 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))

- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- 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))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- Vehicle Prowl 1 (RCW 9A.52.095)

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 18

[Substitute House Bill 1027]

LIVE HORSE RACING COMPACT

AN ACT Relating to the live horse racing compact; and adding a new chapter to Title 67 RCW.

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

NEW SECTION. Sec. 1. The purposes of the live horse racing compact are to:

(1) Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to the compact meet a uniform minimum standard of honesty and integrity;

(2) Facilitate the growth of the horse racing industry in each party state and nation-wide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering;

(3) Authorize the Washington horse racing commission to participate in the live horse racing compact;

(4) Provide for participation in the live horse racing compact by officials of the party states, and permit those officials, through the compact committee established by this chapter, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of the live horse racing compact; and

(5) Establish the compact committee created by this chapter as an interstate governmental entity duly authorized to request and receive criminal history record information from the federal bureau of investigation and other state and local law enforcement agencies.

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

(1) "Compact committee" means the organization of officials from the party states that is authorized and empowered by the live horse racing compact to carry out the purposes of the compact.

(2) "Official" means the appointed, elected, designated, or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

(3) "Participants in live racing" means participants in live horse racing with pari-mutuel wagering in the party states.

(4) "Party state" means each state that has enacted the live horse racing compact.

(5) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States.

NEW SECTION. Sec. 3. The live horse racing compact shall come into force when enacted by any four states. Thereafter, the compact shall become effective as to any other state upon: (1) That state's enactment of the compact; and (2) the affirmative vote of a majority of the officials on the compact committee as provided in section 8 of this act.

NEW SECTION. Sec. 4. Any state that has adopted or authorized horse racing with pari-mutuel wagering is eligible to become party to the live horse racing compact.

NEW SECTION. Sec. 5. Any party state may withdraw from the live horse racing compact by enacting a statute repealing the compact, but no such withdrawal is effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If, as a result of withdrawals, participation in the compact decreases to less than three party states, the compact no longer shall be in force and effect unless and until there are at least three or more party states again participating in the compact.

NEW SECTION. Sec. 6. (1) There is created an interstate governmental entity to be known as the "compact committee" which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the party state he or she represents. Under the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

(2) The governor shall appoint the official to represent the state of Washington on the compact committee for a term of four years. No official may serve more

than three consecutive terms. A vacancy shall be filled by the governor for the unexpired term.

NEW SECTION. Sec. 7. In order to carry out the live horse racing compact, the compact committee is granted the power and duty to:

(1) Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the compact committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. However, with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements;

(2) Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the federal bureau of investigation and relevant state and local law enforcement agencies, and, where appropriate, from the royal Canadian mounted police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the compact committee under subsection (1) of this section. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of the compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the attorney general of the United States, for submission to the federal bureau of investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the federal bureau of investigation or other receiving law enforcement agency;

(3) Issue licenses to, and renew the licenses of, participants in live racing listed in subsection (1) of this section who are found by the compact committee to have met the licensure and renewal requirements established by the compact committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the

applicant that it will not be able to process his or her application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant has the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established under subsection (1) of this section;

(4) Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to carry out the compact;

(5) Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of the compact, prescribe their powers, duties, and qualifications, hire persons to fill those offices, employments, and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits, and other conditions of employment of its officers, employees and other positions;

(6) Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation, or other entity;

(7) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the compact;

(8) Charge a fee to each applicant for an initial license or renewal of a license; and

(9) Receive other funds through gifts, grants, and appropriations.

NEW SECTION. Sec. 8. (1) Each official is entitled to one vote on the compact committee.

(2) All action taken by the compact committee with regard to the addition of party states as provided in section 3 of this act, the licensure of participants in live racing, and the receipt and disbursement of funds require a majority vote of the total number of officials, or their alternates, on the compact committee. All other action by the compact committee requires a majority vote of those officials, or their alternates, present and voting.

(3) No action of the compact committee may be taken unless a quorum is present. A majority of the officials, or their alternates, on the compact committee constitutes a quorum.

NEW SECTION. Sec. 9. (1) The compact committee shall elect annually from among its members a chair, a vice-chair, and a secretary/treasurer.

(2) The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials, or their alternates, on the compact committee at that time and shall have the power by the same vote to amend and rescind such bylaws. The compact committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

(3) The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and the executive director's support staff.

(4) Employees of the compact committee are considered governmental employees.

NEW SECTION. Sec. 10. No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his or her responsibilities and duties under the live horse racing compact.

NEW SECTION. Sec. 11. (1) By enacting the compact, each party state:

(a) Agrees: (i) To accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing under the compact committee's licensure requirements; and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his or her alternate;

(b) Agrees not to treat a notification to an applicant by the compact committee under section 7(3) of this act that the compact committee will not be able to process the application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee; and

(c) Reserves the right: (i) To charge a fee for the use of a compact committee license in that state; (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked; (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee; and (iv) to establish its own licensure standards for the licensure of nonracing employees at horse racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

(2) No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

NEW SECTION. Sec. 12. All departments, agencies, and officers of the state of Washington and its political subdivisions are authorized to cooperate with the compact committee in furtherance of any of its activities of the live horse racing compact.

NEW SECTION. Sec. 13. Nothing in this chapter shall be construed to diminish or limit the powers and responsibilities of the Washington horse racing commission established in chapter 67.16 RCW or to invalidate any action of the Washington horse racing commission previously taken, including without limitation any regulation issued by the commission.

NEW SECTION. Sec. 14. This chapter shall be liberally construed so as to effectuate its purposes. The provisions of this chapter are severable, and, if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the Constitution of the United States or of any party state, or the applicability of the live horse racing compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If all or some portion of the live horse racing compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

NEW SECTION. Sec. 15. This act may be known and cited as the live horse racing compact.

NEW SECTION. Sec. 16. Sections 1 through 15 of this act constitute a new chapter in Title 67 RCW.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 19

[House Bill 1100]

MARINE EMPLOYEES—NOTICE REQUIREMENTS

AN ACT Relating to notice requirements; and amending RCW 47.64.260.

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

Sec. 1. RCW 47.64.260 and 1983 c 15 s 17 are each amended to read as follows:

Any notice required under this chapter shall be in writing, but service thereof is sufficient if mailed by ~~((restricted))~~ certified mail, return receipt requested, addressed to the last known address of the parties, or sent by electronic facsimile transmission with transaction report verification and same-day United States postal service mailing of copies or service as specified in Title 316 WAC. unless otherwise provided in this chapter. Refusal of ~~((restricted))~~ certified mail by any party shall be considered service. Prescribed time periods commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice.

Passed the House March 9, 2001.

Passed the Senate April 3, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 20

[Substitute House Bill 1140]

GRAIN WAREHOUSE COMPANIES--TAXATION

AN ACT Relating to the taxation of grain warehouse companies; amending RCW 82.04.090; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.04.090 and 1975 1st ex.s. c 278 s 40 are each amended to read as follows:

"Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. However, persons operating grain warehouses licensed under chapter 22.09 RCW may elect to report the value proceeding or accruing from grain warehouse operations on either a cash receipts or accrual basis. The department of revenue may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due.

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 July 1, 2001.

Passed the House February 27, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 21

[House Bill 1296]

DEPOSITORY INSTITUTIONS--INSURERS

AN ACT Relating to restricting the investment of insurers in depository institutions or any company which controls a depository institution; and amending RCW 48.13.030.

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

Sec. 1. RCW 48.13.030 and 1993 c 92 s 1 are each amended to read as follows:

(1) Except as set forth in RCW 48.13.273, an insurer shall not, except with the consent of the commissioner, have at any time any combination of investments in or loans upon the security of the obligations, property, and securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. This section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state of the United States, nor to investments in foreign securities

pursuant to ~~((subsection (1) of))~~ RCW 48.13.180(1), nor include policy loans made pursuant to RCW 48.13.190.

(2) An insurer shall not, except with the consent of the commissioner, have at any time investments in the voting securities of a depository institution or any company which controls a depository institution aggregating an amount exceeding five percent of the insurer's admitted assets.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 22

[House Bill 1309]

HEMODIALYSIS TECHNICIANS

AN ACT Relating to the credentialing of hemodialysis technicians; amending RCW 18.135.020 and 18.135.060; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. There are concerns about the quality of care dialysis patients are receiving due to the lack of uniform training standards for hemodialysis clinical personnel working in renal dialysis facilities in this state. Currently, hemodialysis technicians are trained by the facilities, and most facilities have established training programs providing from six to eight weeks of ongoing training. Training is not standardized and varies among facilities. Some facilities offer no on-site training. National studies indicate that renal dialysis facilities avoid costs by reducing staffing levels and substituting untrained technicians for professional nurses generally in response to inadequate medicare reimbursements. These studies also suggest a resulting increase in patient morbidity and mortality.

The legislature finds that the regulation of hemodialysis technicians will increase the level of professionalism in the state's renal dialysis facilities, providing increased quality assurance for patients, health care providers, third-party payers, and the public in general. The legislature declares that this act furthers the public health, safety, and welfare of the people of the state.

Sec. 2. RCW 18.135.020 and 1997 c 133 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Secretary" means the secretary of health.

(2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter. However persons trained by a federally approved end-stage renal disease facility who perform end-stage renal dialysis in the home setting are exempt from certification under this chapter.

(3) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW;

or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, or a naturopath licensed under chapter 18.36A RCW.

(4) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections, as defined in this chapter, but need not be present during procedures to withdraw blood.

(5) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.

(6) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee.

Sec. 3. RCW 18.135.060 and 2000 c 171 s 30 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) Any health care assistant certified pursuant to this chapter shall perform the functions authorized in this chapter only by delegation of authority from the health care practitioner and under the supervision of a health care practitioner acting within the scope of his or her license. In the case of subcutaneous, intradermal and intramuscular and intravenous injections, a health care assistant may perform such functions only under the supervision of a health care practitioner having authority, within the scope of his or her license, to order such procedures.

(b) The health care practitioner who ordered the procedure or a health care practitioner who could order the procedure under his or her license shall be physically present in the immediate area of a hospital or nursing home where the injection is administered. Sensitivity agents being administered intradermally or by the scratch method are excluded from this requirement.

(2) A health care assistant trained by a federally approved end-stage renal disease facility may perform venipuncture for blood withdrawal, administration of oxygen as necessary by cannula or mask, venipuncture for placement of fistula needles, ~~connect to vascular catheter for hemodialysis~~, intravenous administration of heparin and sodium chloride solutions as an integral part of dialysis treatment, and intradermal, subcutaneous, or topical administration of local anesthetics in conjunction with placement of fistula needles, and intraperitoneal administration

of sterile electrolyte solutions and heparin for peritoneal dialysis: (a) In the center or health care facility if a registered nurse licensed under chapter 18.79 RCW is physically present and immediately available in such center or health care facility; or (b) in the patient's home if a physician and a registered nurse are available for consultation during the dialysis.

NEW SECTION. Sec. 4. The secretary of health is authorized to establish a task force to assist in the development of core competencies and minimum training standards for mandatory training programs to be utilized by renal dialysis facilities for training hemodialysis technicians as health care assistants pursuant to this act. The secretary shall appoint to the task force persons knowledgeable in renal dialysis practice, including nephrologists, dialysis nurses, patient care hemodialysis technicians, dialysis patients, and other individuals with expertise. The secretary may appoint succeeding advisory task forces for reviewing and updating future requirements as necessary.

NEW SECTION. Sec. 5. Section 2 of this act takes effect March 1, 2002.

Passed the House February 20, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 23

[House Bill 1313]

PRIVATE VOCATIONAL SCHOOLS—LIABILITY—LICENSURE

AN ACT Relating to liability and licensure of private vocational schools; and amending RCW 28C.10.050, 28C.10.084, and 28C.10.110.

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

Sec. 1. RCW 28C.10.050 and 1990 c 188 s 7 are each amended to read as follows:

(1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements for each school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter 42.17 RCW;

(b) Follow a uniform state-wide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The cancellation and refund policy, (ii) a brief statement that the school is licensed under this

chapter and that inquiries may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll. Guidelines for such assessments shall be developed by the agency, in consultation with the schools. The method of assessment shall be reported to the agency. Assessment records shall be maintained in the student's file;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation.

(2) Any enrollment contract shall have an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with subsection (1)(h) of this section and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties.

(3) The agency shall deny, revoke, or suspend the license of any school that does not meet or maintain the minimum standards.

Sec. 2. RCW 28C.10.084 and 1999 c 321 s 3 are each amended to read as follows:

(1) The agency shall establish, maintain, and administer a tuition recovery trust fund. All funds collected for the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private vocational school licensed under this chapter, or, in the case of a minor, his or her parents or guardian, for purposes including but not limited to the settlement of claims related to school closures under subsection (10) of this section and the settlement of claims under RCW 28C.10.120. The fund shall be liable for settlement of claims and costs of administration but shall not be liable to pay out or recover penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to the state of Washington from claims made against the fund.

(2) By June 30, 1998, a minimum operating balance of one million dollars shall be achieved in the fund and maintained thereafter. If disbursements reduce

the operating balance below two hundred thousand dollars at any time before June 30, 1998, or below one million dollars thereafter, each participating ~~((entity))~~ owner shall be assessed a pro rata share of the deficiency created, based upon the incremental scale created under subsection (6) of this section for each private vocational school. The agency shall adopt schedules of times and amounts for effecting payments of assessment.

(3) In order for a private vocational school to be and remain licensed under this chapter each ~~((entity))~~ owner shall, in addition to other requirements under this chapter, make cash deposits on behalf of the school into a tuition recovery trust fund as a means to assure payment of claims brought under this chapter.

(4) The amount of liability that can be satisfied by this fund on behalf of each ~~((individual entity))~~ private vocational school licensed under this chapter shall be ~~((established by the agency, based on an incremental scale that recognizes the average))~~ the amount of unearned prepaid tuition in possession of the ~~((entity. However, the minimum amount of liability for any entity shall not be less than five thousand dollars. The upper limit of liability is reestablished after any disbursements are made to settle an individual claim or class of claims))~~ owner.

(5) The fund's liability with respect to each participating ~~((entity))~~ private vocational school commences on the date of ~~((its))~~ the initial deposit into the fund made on its behalf and ceases one year from the date ~~((it))~~ the school is no longer licensed under this chapter.

(6) The agency shall adopt by rule a matrix for calculating the deposits into the fund ~~((required of each entity))~~ on behalf of each vocational school. Proration shall be determined by factoring the ~~((entity's))~~ school's share of liability in proportion to the aggregated liability of all participants under the fund by grouping such prorations under the incremental scale created by subsection (4) of this section. Expressed as a percentage of the total liability, that figure determines the amount to be contributed when factored into a fund containing one million dollars. The total amount of its prorated share, minus the amount paid for initial capitalization, shall be payable in up to twenty increments over a ten-year period, commencing with the sixth month after the ~~((entity makes its))~~ initial capitalization deposit has been made on behalf of the school. Additionally, the agency shall require deposits for initial capitalization, under which the amount each ~~((entity))~~ owner deposits is proportionate to ~~((its))~~ the school's share of two hundred thousand dollars, employing the matrix developed under this subsection. ~~((The amount thus established shall be deposited by each applicant for initial licensing before the issuance of such license.))~~

(7) No vested right or interests in deposited funds is created or implied for the depositor, either at any time during the operation of the fund or at any such future time that the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. The agency shall maintain the fund, serve appropriate notices to affected ~~((entities))~~ owners when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the fund.

When the aggregated deposits total five million dollars and the history of disbursements justifies such modifications, the agency may at its own option reduce the schedule of deposits whether as to time, amount, or both and the agency may also entertain proposals from among the licensees with regard to disbursing surplus funds for such purposes as vocational scholarships.

(8) Based on annual financial data supplied by the ~~((entity))~~ owner, the agency shall determine whether the increment assigned to that ~~((entity))~~ private vocational school on the incremental scale established under subsection (6) of this section has changed. If an increase or decrease in gross annual tuition income has occurred, a corresponding change in ~~((its))~~ the school's incremental position and contribution schedule shall be made before the date of ~~((its))~~ the owner's next scheduled deposit into the fund. Such adjustments shall only be calculated and applied annually.

(9) ~~((No deposits made into the fund by an entity are transferable.))~~ If the majority ownership interest in ~~((an entity))~~ a private vocational school is conveyed through sale or other means into different ownership, all contributions made to the date of transfer ~~((accrue to))~~ remain in the fund. The new owner ~~((commences contributions under provisions applying to a new applicant, except that if ownership of an entity is transferred to an immediate family member.))~~ shall continue to make contributions to the fund until the original ten-year cycle is completed. All tuition recovery trust fund contributions shall remain with the ~~((entity))~~ private vocational school transferred, and no additional cash deposits may be required beyond the original ten-year contribution cycle.

(10) To settle claims adjudicated under RCW 28C.10.120 and claims resulting when a private vocational school ceases to provide educational services, the agency may make disbursements from the fund. Students enrolled under a training contract executed between a school and a public or private agency or business are not eligible to make a claim against the fund. In addition to the processes described for making reimbursements related to claims under RCW 28C.10.120, the following procedures are established to deal with reimbursements related to school closures:

(a) The agency shall attempt to notify all potential claimants. The unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the agency to ascertain the names and whereabouts of each potential claimant but the agency shall make reasonable inquiries to secure that information from all likely sources. The agency shall then proceed to settle the claims on the basis of information in its possession. The agency is not responsible or liable for claims or for handling claims that may subsequently appear or be discovered.

(b) Thirty days after identified potential claimants have been notified, if a claimant refuses or neglects to file a claim verification as requested in such notice, the agency shall be relieved of further duty or action on behalf of the claimant under this chapter.

(c) After verification and review, the agency may disburse funds from the tuition recovery trust fund to settle or compromise the claims. However, the liability of the fund for claims against the closed ~~((entity))~~ school shall not exceed the ~~((maximum amount of liability assigned to that entity under subsection (6) of this section))~~ amount of unearned prepaid tuition in the possession of the owner.

(d) In the instance of claims against a closed school, the agency shall seek to recover such disbursed funds from the assets of the defaulted ~~((entity))~~ owner, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

(1) When funds are disbursed to settle claims against a ~~((current licensee))~~ licensed private vocational school, the agency shall make demand upon the ~~((licensee))~~ owner for recovery. The agency shall adopt schedules of times and amounts for effecting recoveries. An ~~((entity's))~~ owner's failure to perform subjects ~~((its))~~ the school's license to suspension or revocation under RCW 28C.10.050 in addition to any other available remedies.

(12) For purposes of this section, "owner" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust having a controlling ownership interest in a private vocational school.

Sec. 3. RCW 28C.10.110 and 1990 c 188 s 9 are each amended to read as follows:

It is an unfair business practice for an entity operating a private vocational school or an agent employed by a private vocational school to:

(1) Fail to comply with the terms of a student enrollment contract or agreement;

(2) Use an enrollment contract form, catalog, brochure, or similar written material affecting the terms and conditions of student enrollment other than that previously submitted to the agency and authorized for use;

(3) Advertise in the help wanted section of a newspaper or otherwise represent falsely, directly or by implication, that the school is an employment agency, is making an offer of employment or otherwise is attempting to conceal the fact that what is being represented are course offerings of a school;

(4) Represent falsely, directly or by implication, that an educational program is approved by a particular industry or that successful completion of the program qualifies a student for admission to a labor union or similar organization or for the receipt of a state license in any business, occupation, or profession;

(5) Represent falsely, directly or by implication, that a student who successfully completes a course or program of instruction may transfer credit for the course or program to any institution of higher education;

(6) Represent falsely, directly or by implication, in advertising or in any other manner, the school's size, location, facilities, equipment, faculty qualifications, or the extent or nature of any approval received from an accrediting association;

(7) Represent that the school is approved, recommended, or endorsed by the state of Washington or by the agency, except the fact that the school is authorized to operate under this chapter may be stated;

(8) Provide prospective students with any testimonial, endorsement, or other information which has the tendency to mislead or deceive prospective students or the public regarding current practices of the school, current conditions for employment opportunities, or probable earnings in the occupation for which the education was designed;

(9) Designate or refer to sales representatives as "counselors," "advisors," or similar terms which have the tendency to mislead or deceive prospective students or the public regarding the authority or qualifications of the sales representatives;

(10) Make or cause to be made any statement or representation in connection with the offering of education if the school or agent knows or reasonably should have known the statement or representation to be false, substantially inaccurate, or misleading;

(11) Engage in methods of advertising, sales, collection, credit, or other business practices which are false, deceptive, misleading, or unfair, as determined by the agency by rule; or

(12) Attempt to recruit students in or within forty feet of a building that contains a welfare or unemployment office. Recruiting includes, but is not limited to canvassing and surveying. Recruiting does not include leaving materials at or near an office for a person to pick up of his or her own accord, or handing a brochure or leaflet to a person provided that no attempt is made to obtain a name, address, telephone number, or other data, or to otherwise actively pursue the enrollment of the individual.

It is a violation of this chapter for an entity operating a private vocational school to engage in an unfair business practice. The agency may deny, revoke, or suspend the license of any entity that is found to have engaged in a substantial number of unfair business practices or that has engaged in significant unfair business practices.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 24

[House Bill 1317]

EPINEPHRINE—EMERGENCY ADMINISTRATION

AN ACT Relating to the emergency administration of epinephrine; and amending RCW 18.73.250.

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

Sec. 1. RCW 18.73.250 and 1999 c 337 s 4 are each amended to read as follows:

(1) All of the state's ambulance and aid services shall make epinephrine available to their emergency medical technicians in their emergency care supplies. The emergency medical technician may administer epinephrine to a patient of any age upon the presentation of evidence of a prescription for epinephrine or to a patient under eighteen years of age:

(a) Upon the request of the patient or his or her parent or guardian; or

(b) Upon the request of a person who presents written authorization from the patient or his or her parent or guardian making such a request.

(2) Any emergency medical technician, emergency medical service, or medical program director acting in good faith and in compliance with the provisions of this section shall not be liable for any civil damages arising out of the furnishing or administration of epinephrine.

(3) Nothing in this section authorizes the administration of epinephrine by a first responder.

~~((4) This section shall expire December 31, 2001.)~~

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 25

[Substitute House Bill 1375]
EXPEDITED RULE ADOPTION

AN ACT Relating to reauthorizing the expedited rule adoption process; amending RCW 34.05.230; adding a new section to chapter 34.05 RCW; and repealing RCW 34.05.354.

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

Sec. 1. RCW 34.05.230 and 1997 c 409 s 202 are each amended to read as follows:

(1) ~~((An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:~~

~~—(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;~~

~~—(b) The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;~~

- ~~— (c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;~~
- ~~— (d) The content of the proposed rules is explicitly and specifically dictated by statute;~~
- ~~— (e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or~~
- ~~— (f) The proposed rule is being amended after a review under RCW 34.05.328 or section 210 of this act.~~
- ~~— (2) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited adoption of rules. The notice for the expedited adoption of rules must contain a statement in at least ten-point type, that is substantially in the following form:~~

~~NOTICE~~

~~THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).~~

- ~~— (3) The agency shall send a copy of the notice of the proposed expedited rule making to any person who has requested notification of proposals for the expedited adoption of rules or of agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (2) of this section. The notice must also include an explanation of the reasons the agency believes the expedited adoption of the rule is appropriate.~~
- ~~— (4) The code reviser shall publish the text of all rules proposed for expedited adoption along with the notice required in this section in a separate section of the Washington State Register. Once the text of the proposed rules has been published in the Washington State Register, the only changes that an agency may make in the~~

text of these proposed rules before their final adoption are to correct typographical errors:

~~—(5) Any person may file a written objection to the expedited adoption of a rule. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited adoption of a rule may withdraw the objection.~~

~~—(6) If no written objections to the expedited adoption of a rule are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.~~

~~—(7) If a written notice of objection to the expedited adoption of the rule is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule adoption proceedings in accordance with this chapter.~~

~~—(8) Subsections (1) through (8) of this section expire on December 31, 2000.~~
~~—an (An)) An~~ agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

~~((++))~~ (3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster once each year and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

~~((+2))~~ (4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained.

NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW to read as follows:

(1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(b) The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(d) The content of the proposed rules is explicitly and specifically dictated by statute;

(e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

(f) The proposed rule is being amended after a review under RCW 34.05.328.

(2) An agency may file notice for the expedited repeal of rules under the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

(b) The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

(c) The rule is no longer necessary because of changed circumstances; or

(d) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

(3) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule making. The notice for the expedited rule making must contain a statement in at least ten-point type, that is substantially in the following form:

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

(4) The agency shall send a copy of the notice of the proposed expedited rule making to any person who has requested notification of proposals for expedited rule making or of regular agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (3) of this section. The notice must also include an explanation of the reasons the agency believes the expedited rule-making process is appropriate.

(5) The code reviser shall publish the text of all rules proposed for expedited adoption, and the citation and caption of all rules proposed for expedited repeal, along with the notice required in this section in a separate section of the Washington State Register. Once the notice of expedited rule making has been published in the Washington State Register, the only changes that an agency may make in the noticed materials before their final adoption or repeal are to correct typographical errors.

(6) Any person may file a written objection to the expedited rule making. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited rule making may withdraw the objection.

(7) If no written objections to the expedited rule making are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting or repealing the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.

(8) If a written notice of objection to the expedited rule making is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the

purposes of RCW 34.05.310, and the agency may initiate further rule-making proceedings in accordance with this chapter.

(9) As used in this section, "expedited rule making" includes both the expedited adoption of rules and the expedited repeal of rules.

NEW SECTION. Sec. 3. RCW 34.05.354 (Expedited repeal) and 1998 c 280 s 6, 1997 c 409 s 208, & 1995 c 403 s 701 are each repealed.

Passed the House March 12, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 13, 2001.

Filed in Office of Secretary of State April 13, 2001.

CHAPTER 26

[House Bill 1055]

RESIDENTIAL AND RECREATIONAL LOTS—TAXATION

AN ACT Relating to ad valorem taxation of certain property that would otherwise be subject to leasehold excise tax; amending RCW 84.36.451; adding a new section to chapter 82.29A RCW; adding a new section to chapter 84.40 RCW; adding a new section to chapter 84.55 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.29A RCW to read as follows:

All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from tax under this chapter.

Sec. 2. RCW 84.36.451 and 1979 ex.s. c 196 s 10 are each amended to read as follows:

(1) The following property shall be exempt from taxation: Any and all rights to occupy or use any real or personal property owned in fee or held in trust by:

~~((1))~~ (a) The United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington; or

~~((2))~~ (b) 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; and

~~((3))~~ (c) Including any leasehold interest arising from the property identified in (a) and (b) of this subsection~~((s (1) and (2) of this section))~~ as defined in RCW 82.29A.020~~((—PROVIDED, That))~~.

(2) The exemption under this section shall not apply to:

(a) Any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW ~~((nor))~~; or

(b) Any such leasehold interest consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes.

(3) The exemption under this section shall not be construed to modify the provisions of RCW 84.40.230.

NEW SECTION. Sec. 3. A new section is added to chapter 84.40 RCW to read as follows:

A leasehold interest consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes, together with any improvements thereon, shall be assessed and taxed in the same manner as privately owned real property. The sublessee of each lot, or the lessee if not subleased, is liable for the property tax on the lot and improvements thereon. If property tax for a lot or improvements thereon remains unpaid for more than three years from the date of delinquency, including any property taxes that are delinquent as of the effective date of this section, the county treasurer may proceed to collect the tax in the same manner as for other property, except that the lessor's interest in the property shall not be extinguished as a result of any action for the collection of tax. Collection of property taxes assessed on any such lot shall be enforceable by foreclosure proceedings against any improvement located on such lot, in accordance with real property foreclosure proceedings authorized in chapter 84.64 RCW. Collection of property taxes assessed against any mobile home located on any such lot shall proceed in the same manner as with mobile homes located on private property.

NEW SECTION. Sec. 4. A new section is added to chapter 84.55 RCW to read as follows:

For taxes levied for collection in 2002, the limitation set forth in RCW 84.55.010 for a taxing district shall be increased by an amount equal to the aggregate assessed valuation of leasehold interests subject to tax by the district under section 3 of this act, multiplied by the regular property tax levy rate of that district for the preceding year.

NEW SECTION. Sec. 5. Sections 2 and 3 of this act apply to taxes levied for collection in 2002 and thereafter.

NEW SECTION. Sec. 6. Section 1 of this act takes effect January 1, 2002.

Passed the House February 20, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 27

[Substitute House Bill 1349]
DERELICT VESSELS

AN ACT Relating to funding for removal and disposal of derelict vessels; amending RCW 70.105D.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 there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard.

Sec. 2. RCW 70.105D.070 and 2000 2nd sp.s. c 1 s 912 are each amended to read as follows:

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; ~~(and)~~ (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two

hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

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

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 28

[House Bill 1546]

STALKING VICTIMS—ADDRESS CONFIDENTIALITY

AN ACT Relating to address confidentiality for victims of stalking; and amending RCW 40.24.010, 40.24.030, and 40.24.080.

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

Sec. 1. RCW 40.24.010 and 1998 c 138 s 1 are each amended to read as follows:

The legislature finds that persons attempting to escape from actual or threatened domestic violence ((or)), sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence ((or)), sexual assault, or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence ((or)), sexual assault, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

Sec. 2. RCW 40.24.030 and 1998 c 138 s 2 are each amended to read as follows:

(1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence ((~~or~~)), sexual assault, or stalking; and (ii) that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence ((~~or~~)), sexual assault, or stalking;

(e) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under RCW 40.16.030 or other applicable statutes.

Sec. 3. RCW 40.24.080 and 1998 c 138 s 4 are each amended to read as follows:

The secretary of state shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to ((~~either~~)) victims of domestic violence ((~~or~~)), sexual assault, or stalking to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the secretary of state or its designees to applicants shall in no way be construed as legal advice.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 29

[House Bill 1548]

PARK DISTRICTS—COMPETITIVE BIDDING

AN ACT Relating to allowing metropolitan park districts to use a small works roster process; and adding a new section to chapter 35.61 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 35.61 RCW 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 and competitive bidding. Before awarding any such contract the board of park 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 park 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 park 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 metropolitan park district 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 metropolitan park 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 park 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 park 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 is entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of park commissioners in the full amount of the contract price between the bidder and the metropolitan park district 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 metropolitan park district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of park commissioners deems it necessary to take legal action to collect on any bid bond

required by this section, then the metropolitan park district is 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) As an alternative to requirements under subsection (1) of this section, a metropolitan park district may let contracts using the small works roster process under RCW 39.04.155.

(3) The park board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within RCW 39.04.280 applies to the purchase or public work.

Passed the House March 5, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 30

[House Bill 1577]

ELECTIONS—CANDIDATES

AN ACT Relating to candidates for elected office; amending RCW 29.24.020, 29.24.035, and 29.30.020; adding a new section to chapter 29.27 RCW; and adding a new section to chapter 29.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 29.27 RCW to read as follows:

In a year in which the president and vice-president of the United States are to be elected, the secretary of state shall include in the certification prepared under RCW 29.27.050 the names of all candidates for president and vice-president who, at least fifty days before the general election, have certified a slate of electors to the secretary of state under RCW 29.71.020 and have been nominated either (1) by a major political party, as certified by the appropriate authority under party rules, or (2) by a minor party or as independent candidates under chapter 29.24 RCW. Major or minor political parties or independent presidential candidates may substitute a different candidate for vice-president for the one whose name appears on the party's certification or nominating petition at any time before forty-five days before the general election, by certifying the change to the secretary of state. Substitutions must not be permitted to delay the printing of either ballots or a voters' pamphlet. Substitutions are valid only if submitted under oath and signed by the same individual who originally certified the nomination, or his or her documented successor, and only if the substitute candidate consents in writing.

Sec. 2. RCW 29.24.020 and 1989 c 215 s 2 are each amended to read as follows:

(1) Any nomination of a candidate for partisan public office by other than a major political party ~~((shall only be made either: (1))) may be made only: (a)~~ In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29.68.080; ~~((or (2))) (b)~~ as provided by RCW ~~((29.51.170:)) 29.62.180; or (c)~~ as otherwise provided in this section.

(2) Nominations of candidates for president and vice-president of the United States other than by a major political party may be made either at a convention conducted under subsection (1) of this section, or at a similar convention taking place not earlier than the first Sunday in July and not later than seventy days before the general election. Conventions held during this time period may not nominate candidates for any public office other than president and vice-president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under RCW 29.15.230, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29.24.025 do not apply to such a convention. If primary ballots or a voters' pamphlet are ordered to be printed before the deadline for submitting the certificate of nomination and the certificate has not been filed, then the candidate's name will be included but may not appear on the general election ballot unless the certificate is timely filed and the candidate otherwise qualifies to appear on that ballot.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice-president, United States senator, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29.24.030. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention.

Sec. 3. RCW 29.24.035 and 1989 c 215 s 5 are each amended to read as follows:

A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW ~~((29.24.030(3))) 29.24.040(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to~~

sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election.

NEW SECTION. Sec. 4. A new section is added to chapter 29.24 RCW to read as follows:

(1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name as the court may deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston County. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail.

Sec. 5. RCW 29.30.020 and 1990 c 59 s 11 are each amended to read as follows:

(1) The positions or offices on a primary ballot shall be arranged in substantially the following order: 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; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary ballot, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

(2) The order of the positions or offices on an election ballot shall be substantially the same as on a primary ballot except that the offices of president and vice-president of the United States shall precede all other offices on a presidential election ballot. State ballot issues shall be placed before all offices on an election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule.

(3) The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot. A candidate shall file a written notice with the filing officer within three business days after the close of the filing period designating the political party to be indicated next to the candidate's name on the ballot if either: (a) The candidate has been nominated by two or more minor political parties or independent conventions; or (b) the candidate has both filed a declaration of candidacy declaring an affiliation with a major political party and been nominated by a minor political party or independent convention. If no written notice is filed the filing officer shall give effect to the party designation shown upon the first document filed. A candidate may be deemed nominated by a minor party or independent convention only if all documentation required by chapter 29.24 RCW has been timely filed.

Passed the House March 12, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 31

[House Bill 1623]

HIGHER EDUCATION INSTITUTIONS—SURPLUS FUNDS

AN ACT Relating to investments of surplus funds by four-year institutions of higher education; and amending RCW 43.250.010, 43.250.020, and 43.250.040.

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

Sec. 1. RCW 43.250.010 and 1996 c 268 s 1 are each amended to read as follows:

The purpose of this chapter is to enable political subdivisions, community and technical college districts, ~~((and))~~ the state board for community and technical colleges as established in chapter 28B.50 RCW, and public four-year institutions of higher education to participate with the state in providing maximum opportunities for the investment of surplus public funds consistent with the safety and protection of such funds. The legislature finds and declares that the public interest is found in providing maximum prudent investment of surplus funds, thereby reducing the need for additional taxation. The legislature also recognizes that not all political subdivisions are able to maximize the return on their temporary

surplus funds. The legislature therefore provides in this chapter a mechanism whereby political subdivisions, community and technical colleges, ~~((and))~~ the state board for community and technical colleges, and public four-year institutions of higher education may, at their option, utilize the resources of the state treasurer's office to maximize the potential of surplus funds while ensuring the safety of public funds.

Sec. 2. RCW 43.250.020 and 1996 c 268 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) "Public funds investment account" or "investment pool" means the aggregate of all funds as defined in subsection (5) of this section that are placed in the custody of the state treasurer for investment and reinvestment.

(2) "Political subdivision" means any county, city, town, municipal corporation, political subdivision, or special purpose taxing district in the state.

(3) "Local government official" means any officer or employee of a political subdivision who has been designated by statute or by local charter, ordinance, or resolution as the officer having the authority to invest the funds of the political subdivision. However, the county treasurer shall be deemed the only local government official for all political subdivisions for which the county treasurer has exclusive statutory authority to invest the funds thereof.

(4) "Financial officer" means the board-appointed treasurer of a community or technical college district ~~((or)),~~ the state board for community and technical colleges, or a public four-year institution of higher education.

(5) "Funds" means:

(a) Public funds under the control of or in the custody of any local government official or local funds, as defined by the office of financial management publication "Policies, Regulations and Procedures," under the control of or in the custody of a financial officer by virtue of the official's authority that are not immediately required to meet current demands;

(b) State funds deposited in the investment pool by the state treasurer that are the proceeds of bonds, notes, or other evidences of indebtedness authorized by the state finance committee under chapter 39.42 RCW or payments pursuant to financing contracts under chapter 39.94 RCW, when the investments are made in order to comply with the Internal Revenue Code of 1986, as amended.

Sec. 3. RCW 43.250.040 and 1996 c 268 s 3 are each amended to read as follows:

If authorized by statute, local ordinance, or resolution, a local government official or financial officer or his or her designee may place funds into the public funds investment account for investment and reinvestment by the state treasurer in those securities and investments set forth in RCW 43.84.080 and chapter 39.58 RCW. The state treasurer shall invest the funds in such manner as to effectively maximize the yield to the investment pool. In investing and reinvesting moneys

in the public funds investment account and in acquiring, retaining, managing, and disposing of investments of the investment pool, there shall be exercised the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of the funds considering the probable income as well as the probable safety of the capital.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 32

[Engrossed Senate Bill 5053]

UNIFORM COMMERCIAL CODE—ARTICLE 9A

AN ACT Relating to technical amendments and corrections to Article 9A of the Uniform Commercial Code and related statutes; amending RCW 19.40.081, 43.163.130, 60.10.010, 60.11.030, 60.11.904, 60.56.015, 62A.1-105, 62A.1-201, 62A.2A-303, 62A.2A-306, 62A.3-102, 62A.4-210, 62A.8-110, 62A.8-510, 62A.9A-102, 62A.9A-104, 62A.9A-105, 62A.9A-107, 62A.9A-201, 62A.9A-208, 62A.9A-301, 62A.9A-305, 62A.9A-306, 62A.9A-311, 62A.9A-313, 62A.9A-317, 62A.9A-322, 62A.9A-328, 62A.9A-331, 62A.9A-333, 62A.9A-334, 62A.9A-336, 62A.9A-406, 62A.9A-407, 62A.9A-509, 62A.9A.513, 62A.9A-516, 62A.9A-520, 62A.9A-523, 62A.9A-608, 62A.9A-613, 62A.9A-615, 62A.9A-625, 62A.9A-628, 62A.9A-702, 62A.9A-703, 62A.9A-704, 62A.9A-705, 62A.9A-706, 62A.9A-707, and 62A.9A-708; reenacting and amending RCW 60.13.040; adding a new section to Article 62A.9A RCW; repealing RCW 60.11.9001; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 19.40.081 and 1987 c 444 s 8 are each amended to read as follows:

DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREE. (a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of

the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) A lien on or a right to retain any interest in the asset transferred;
- (2) Enforcement of any obligation incurred; or
- (3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under RCW 19.40.041(a)(2) or 19.40.051 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article ((9)) 2A of Title 62A RCW.

(f) A transfer is not voidable under RCW 19.40.051(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Sec. 2. RCW 43.163.130 and 1998 c 48 s 1 are each amended to read as follows:

NONRECOURSE REVENUE BONDS—ISSUANCE. (1) The authority may issue its nonrecourse revenue bonds in order to obtain the funds to carry out the programs authorized in this chapter. The bonds shall be special obligations of the authority, payable solely out of the special fund or funds established by the authority for their repayment.

(2) Any bonds issued under this chapter may be secured by a financing document between the authority and the purchasers or owners of such bonds or between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(a) The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof.

(b) The financing document may contain such provisions for protecting and enforcing the rights, security, and remedies of bondowners as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bondowners, and covenants setting forth duties of and limitations on the authority in conduct of its programs and the management of its property.

(c) In addition to other security provided in this chapter or otherwise by law, bonds issued by the authority may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the authority or a trustee or any other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the state. The authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the authority, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the authority to any issuer of such letter of credit of any payments made under such letter of credit.

(3) Without limiting the powers of the authority contained in this chapter, in connection with each issue of its obligation bonds, the authority shall create and establish one or more special funds, including, but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the authority deems necessary, useful, or convenient.

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article ((9)) 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(5) The bonds may be issued as serial bonds, term bonds or any other type of bond instrument consistent with the provisions of this chapter. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; bear such privileges of transferability, exchangeability, and interchangeability; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time or times, and at such price or prices as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the authority's chair and either its secretary or executive director, and may be authenticated by the trustee (if the authority determines to use a trustee) or any registrar which may be designated for the bonds by the authority.

(6) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to maturity of, and to pay any redemption premium on, the outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(7) The bonds of the authority may be negotiable instruments under Title 62A RCW.

(8) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with bondowners.

(10) The authority shall not exceed five hundred million dollars in total outstanding debt at any time.

(11) The state finance committee shall be notified in advance of the issuance of bonds by the authority in order to promote the orderly offering of obligations in the financial markets.

(12) The authority may not issue any bonds after June 30, 2004.

Sec. 3. RCW 60.10.010 and 1969 c 82 s 2 are each amended to read as follows:

DEFINITIONS. As used in this chapter:

(1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.

(2) "Collateral" means the property subject to a statutory lien.

(3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article ((9)) 9A of the Uniform Commercial Code (Title 62A RCW).

Sec. 4. RCW 60.11.030 and 2000 c 250 s 9A-826 are each amended to read as follows:

ATTACHMENT AND EFFECTIVENESS OF LIEN ON CROPS AND PROCEEDS—FILING. (1) Upon the later of both: (a) Execution of the lease or other agreement, or commencement of delivery of such supplies, and/or of provision of such services giving rise to the crop lien; and (b) filing a financing statement as required by RCW 62A.9A-310 and subsection (3) of this section, the crop liens described in RCW 60.11.020 (1) and (2) shall become effective and attach to the subject crop for all sums then and thereafter due and owing the lien holder under this chapter, and those liens shall continue in all identifiable cash proceeds of the crop.

(2) Upon the delivery of an orchard crop by the lien debtor or another handler to a handler without the necessity of filing, the crop lien described in RCW 60.11.020(3) shall become effective and attach to and be perfected in the delivered orchard crop for all sums then and thereafter due and owing the lien holder under this chapter, and the lien shall continue and be perfected in all proceeds of the orchard crop. (~~Upon filing a financing statement as required by RCW 62A.9A-310 and subsection (3) of this section, an effective crop lien described in~~

~~RCW 60.11.020(3) that has attached to the delivered orchard crop shall be perfected:))~~

(3) Except as provided in RCW 60.11.040(4) with respect to the lien of a landlord, and except for the lien of a handler on orchard crops as provided in RCW 60.11.020(3), the lien holder must file the required financing statement during the period after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor, before the end of the fortieth day after the cessation of the work or labor for which the lien is claimed. If the lien holder under the crop liens described in RCW 60.11.020 (1) or (2) is to be allowed costs, disbursements, and attorneys' fees, the lien holder must also mail a copy of such financing statement to the last known address of the debtor by certified mail, return receipt requested, within ten days after filing the financing statement.

Sec. 5. RCW 60.11.904 and 2000 c 250 s 9A-835 are each amended to read as follows:

All statements filed with the department of licensing under this chapter (~~prior to~~) ~~before~~ July 1, 2001, shall satisfy the requirements of RCW 62A.9A-310 and 60.11.030 for filing a financing statement (~~for up to five years from the date they were originally filed if and so long as they are found and reported in a search of financing statements performed by the department of licensing~~).

Sec. 6. RCW 60.13.040 and 1987 c 189 s 7 and 1987 c 148 s 3 are each reenacted and amended to read as follows:

(1) A producer or commercial fisherman claiming a processor or preparer lien may file a statement evidencing the lien with the department of licensing after payment from the processor, conditioner, or preparer to the producer or fisherman is due and remains unpaid. For purposes of this subsection and RCW 60.13.050, payment is due on the date specified in the contract, or if not specified, then within thirty days from time of delivery.

(2) The statement shall be in (~~writing, verified~~) **a record authenticated** by the producer or fisherman, and shall contain in substance the following information:

(a) A true statement of the amount demanded after deducting all credits and offsets;

(b) The name of the processor, conditioner, or preparer who received the agricultural product or fish to be charged with the lien;

(c) A description sufficient to identify the agricultural product or fish to be charged with the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien;

(e) The date on which payment was due for the agricultural product or fish to be charged with the lien; and

(f) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers.

Sec. 7. RCW 60.56.015 and 1993 c 53 s 3 are each amended to read as follows:

An agister who holds a lien under RCW 60.56.010 shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of the posted notice to any lien creditor as defined in RCW ~~((62A.9-301(3)))~~ 62A.9A-102(52) if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW ~~((62A.9-409))~~ 62A.9A-523 and 62A.9A-526. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder.

Sec. 8. RCW 62A.1-105 and 2000 c 250 s 9A-801 are each amended to read as follows:

TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Governing law in the Article on Funds Transfers. RCW 62A.4A-507.

Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. RCW 62A.9A-301 through 62A.9A-307.

Sec. 9. RCW 62A.1-201 and 2000 c 250 s 9A-802 are each amended to read as follows:

GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 62A.2 RCW may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: **NON-NEGOTIABLE BILL OF LADING**) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account

established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

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

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article ((9{A})) 2A. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article ((9{A})) 2A. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article ((9{A})) 2A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest."

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or

is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 10. RCW 62A.2A-303 and 2000 c 250 s 9A-809 are each amended to read as follows:

ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article ~~((9A))~~ 2A, Secured Transactions, by reason of RCW 62A.9A-109(a)(3).

(2) Except as provided in subsection (3) of this section and RCW 62A.9A-407, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which ~~((i))~~ ~~((a))~~ (a) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or ~~((ii))~~ ~~((b))~~ (b) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or

materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and RCW 62A.9A-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (4)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Sec. 11. RCW 62A.2A-306 and 1993 c 230 s 2A-306 are each amended to read as follows:

PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.
~~((If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise:))~~ (a) "Possessory lien." In this section, "possessory lien" has the meaning defined in RCW 62A.9A-333.

(b) Priority of possessory lien. A possessory lien on goods subject to a lease contract has priority over any interest of the lessor or the lessee under the lease contract or this Article only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest.

Sec. 12. RCW 62A.3-102 and 1993 c 229 s 4 are each amended to read as follows:

SUBJECT MATTER. (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or ((9)) 2A, Articles 4 and ((9)) 2A govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

Sec. 13. RCW 62A.4-210 and 2000 c 250 s 9A-813 are each amended to read as follows:

SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article ((9[A])) 2A, but:

(1) No security agreement is necessary to make the security interest enforceable RCW 62A.9A-203(b)(3)(A);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Sec. 14. RCW 62A.8-110 and 2000 c 250 s 9A-817 are each amended to read as follows:

APPLICABILITY; CHOICE OF LAW. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

- (a) The validity of a security;
 - (b) The rights and duties of the issuer with respect to registration of transfer;
 - (c) The effectiveness of registration of transfer by the issuer;
 - (d) Whether the issuer owes any duties to an adverse claimant to a security;
- and
- (e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

- (a) Acquisition of a security entitlement from the securities intermediary;
- (b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- (d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or ~~((chapter 250, Laws of 2000))~~ Article 62A.9A RCW, that jurisdiction is the securities intermediary's jurisdiction.

(b) If ~~((5))~~(a) of this ~~((section ((a) of this subsection)))~~ subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is

governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither ~~((5))~~(a) nor (b) of this ~~((section {(a) nor (b) of this subsection}))~~ subsection applies, and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If ~~((5))~~(a), (b), and (c) of this ~~((section {(a), (b), and (c) of this subsection}))~~ subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If (a), (b), (c), and (d) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

Sec. 15. RCW 62A.8-510 and 2000 c 250 s 9A-820 are each amended to read as follows:

RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER. (1) In a case not covered by the priority rules in Article ~~((9{A}))~~ **9A** or the rules stated in subsection (3) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under RCW 62A.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article ~~((9{A}))~~ **9A**, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4) of this section, purchasers who have control rank according to priority in time of:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under RCW 62A.8-106~~((d)(1) {(4)(a)})~~ **(4)(a)**;

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in

the securities account in which the security entitlement is carried, if the purchaser obtained control under RCW 62A.8-106(~~((d)(2)-(4)(b)))~~ (4)(b); or

(c) If the purchaser obtained control through another person under RCW 62A.8-106(~~((d)(3)-(4)(c)))~~ (4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Sec. 16. RCW 62A.9A-102 and 2000 c 250 s 9A-102 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (a) ~~Article ((9[A]))~~ **2A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include (A) charters or other contracts involving the use or hire of a vessel or (B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which (A) an individual incurs a consumer obligation, (B) a security interest secures the obligation, and (C) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (A) investment property, (B) letters of credit, (C) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, (D) writings that do not contain a promise or order to pay, or (E) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in ~~((64)-(63)))~~ (63)(A) of this subsection;

(D) The spouse of an individual described in ~~((64)-(63)))~~ (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or marriage to an individual described in ~~((64)-(63)))~~ (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds" except as used in RCW 62A.9A-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation,

whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under ~~((75)-(74)))~~ (A) of this subsection.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other Articles.** The following definitions in other Articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.
"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.

"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 17. RCW 62A.9A-104 and 2000 c 250 s 9A-104 are each amended to read as follows:

CONTROL OF DEPOSIT ACCOUNT. (a) **Requirements for control.** A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Sec. 18. RCW 62A.9A-105 and 2000 c 250 s 9A-105 are each amended to read as follows:

CONTROL OF ELECTRONIC CHATTEL PAPER. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in ~~((subsections))~~ subsections (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Sec. 19. RCW 62A.9A-107 and 2000 c 250 s 9A-107 are each amended to read as follows:

CONTROL OF LETTER-OF-CREDIT RIGHT. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under RCW 62A.5-114~~((c))~~ ~~((3))~~ (3) or otherwise applicable law or practice.

Sec. 20. RCW 62A.9A-201 and 2000 c 250 s 9A-201 are each amended to read as follows:

GENERAL EFFECTIVENESS OF SECURITY AGREEMENT. (a) **General effectiveness.** Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) **Applicable consumer laws and other law.** A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers and ~~((i))~~ ~~((1))~~ (1) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and ~~((ii))~~ ~~((2))~~ (2) any consumer-protection statute or regulation.

(c) **Other applicable law controls.** In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) **Further deference to other applicable law.** This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Sec. 21. RCW 62A.9A-208 and 2000 c 250 s 9A-208 are each amended to read as follows:

ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under RCW 62A.9A-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under RCW 62A.9A-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under RCW 62A.9A-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under RCW 62A.8-106(~~((d)(2)-(4)(b)))~~ (4)(b) or 62A.9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under RCW 62A.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

Sec. 22. RCW 62A.9A-301 and 2000 c 250 s 9A-301 are each amended to read as follows:

LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in (~~subsection~~) subsection (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Sec. 23. RCW 62A.9A-305 and 2000 c 250 s 9A-305 are each amended to read as follows:

LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. (a) **Governing law: General rules.** Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in RCW 62A.8-110(~~(d)-(4)~~) (4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(~~(e)-(5)~~) (5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) **Commodity Intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular

jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located.

The local law of the jurisdiction in which the debtor is located governs:

- (1) Perfection of a security interest in investment property by filing;
- (2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
- (3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Sec. 24. RCW 62A.9A-306 and 2000 c 250 s 9A-306 are each amended to read as follows:

LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS. (a) **Governing law:** ~~((Issuers))~~ **Issuer's or nominated person's jurisdiction.** Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in RCW 62A.5-116.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under RCW 62A.9A-308(d).

Sec. 25. RCW 62A.9A-311 and 2000 c 250 s 9A-311 are each amended to read as follows:

PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES. (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310(a);

(2) RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section, RCW 62A.9A-313, and 62A.9A-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and RCW 62A.9A-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling ~~((or leasing))~~ goods of that kind, this section does not apply to a security interest in that collateral created by that person ~~((as debtor))~~.

Sec. 26. RCW 62A.9A-313 and 2000 c 250 s 9A-313 are each amended to read as follows:

WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents,

goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(~~((f+))~~(a)) (1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h); no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

Sec. 27. RCW 62A.9A-317 and 2000 c 250 s 9A-317 are each amended to read as follows:

INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time;

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licenses and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 28. RCW 62A.9A-322 and 2000 c 250 s 9A-322 are each amended to read as follows:

PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL. (a) **General priority**

rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: Proceeds and supporting obligations. For the purposes ~~((to))~~ of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: Proceeds and supporting obligations. Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under RCW 62A.9A-327, 62A.9A-328, 62A.9A-329, 62A.9A-330, or 62A.9A-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d) of this section. Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e) of this section. Subsections (a) through (e) of this section are subject to:

- (1) Subsection (g) of this section and the other provisions of this part;
- (2) RCW 62A.4-210 with respect to a security interest of a collecting bank;
- (3) RCW 62A.5-118 with respect to a security interest of an issuer or nominated person; and
- (4) RCW 62A.9A-110 with respect to a security interest arising under Article 2 or 2A.

(g) **Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides. Conflicts as to priority between and among security interests in crops and agricultural liens subject to chapter 60.11 RCW are governed by the provisions of that chapter.

Sec. 29. RCW 62A.9A-328 and 2000 c 250 s 9A-328 are each amended to read as follows:

PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under RCW 62A.9A-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in ~~((subsections))~~ subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under RCW 62A.9A-106 rank according to priority in time of:

(a) If the collateral is a security, obtaining control;

(b) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under RCW 62A.8-106~~((d)(1))~~ ~~((4)(a))~~ (4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under RCW 62A.8-106~~((d)(2))~~ ~~((4)(b))~~ (4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under RCW 62A.8-106~~((d)(3))~~ ~~((4)(c))~~ (4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in RCW 62A.9A-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under RCW 62A.9A-313(a) and not by control under RCW 62A.9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under RCW 62A.9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by RCW 62A.9A-322 and 62A.9A-323.

Sec. 30. RCW 62A.9A-331 and 2000 c 250 s 9A-331 are each amended to read as follows:

PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER ARTICLES; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER ARTICLE 8. (a) **Rights under Articles 3, 7, and 8 not limited.** This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) **Protection under Article 8.** This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of ~~((an adverse))~~ a claim under Article 8.

(c) **Filing not notice.** Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

Sec. 31. RCW 62A.9A-333 and 2000 c 250 s 9A-333 are each amended to read as follows:

PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. (a) **"Possessory lien."** In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) **Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods only if the lien is created by a statute that expressly so provides ~~((otherwise))~~.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest.

Sec. 32. RCW 62A.9A-334 and 2000 c 250 s 9A-334 are each amended to read as follows:

PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS. (a) **Security interest in fixtures under this Article.** A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: Subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in, or is in possession of, the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods; or

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of subsection (f)(2) priority.** The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) **Subsection (f) prevails.** Subsection (i) of this section prevails over inconsistent provisions of any other statute except RCW 60.11.050.

Sec. 33. RCW 62A.9A-336 and 2000 c 250 s 9A-336 are each amended to read as follows:

COMMINGLED GOODS. (a) **"Commingled goods."** In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) **Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) **Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) **Priority of security interest.** Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) **Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Sec. 34. RCW 62A.9A-406 and 2000 c 250 s 9A-406 are each amended to read as follows:

DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or ~~((general))~~ payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407,

and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) [Reserved]

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

Sec. 35. RCW 62A.9A-407 and 2000 c 250 s 9A-407 are each amended to read as follows:

RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) **Effectiveness of certain terms.** Except as otherwise provided in RCW 62A.2A-303(7), a term described in subsection (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) **Security interest not material impairment.** The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of RCW 62A.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Sec. 36. RCW 62A.9A-509 and 2000 c 250 s 9A-509 are each amended to read as follows:

PERSONS ENTITLED TO FILE A RECORD. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under RCW 62A.9A-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under RCW 62A.9A-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under RCW 62A.9A-315(a)(2).

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

Sec. 37. RCW 62A.9A-513 and 2000 c 250 s 9A-513 are each amended to read as follows:

TERMINATION STATEMENT. (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a) of this section.** To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection (a) of this section, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in RCW 62A.9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in RCW 62A.9A-510, for purposes of RCW 62A.9A-519(g), 62A.9A-522(a), and 62A.9A-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Sec. 38. RCW 62A.9A-516 and 2000 c 250 s 9A-516 are each amended to read as follows:

WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING. (a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered or, in the case of a filing office described in RCW 62A.9A-501(a)(1), an amount equal to the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by RCW 62A.9A-512 or 62A.9A-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under RCW 62A.9A-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) In the case of a record filed or recorded in the filing office described in RCW 62A.9A-501(a)(1), the record does not provide a name for the debtor or a sufficient description of the real property to which ((it)) the record relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by RCW 62A.9A-515(d).

(c) **Rules applicable to subsection (b) of this section.** For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by RCW 62A.9A-512, 62A.9A-514, or 62A.9A-518, is an initial financing statement.

(d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Sec. 39. RCW 62A.9A-520 and 2000 c 250 s 9A-520 are each amended to read as follows:

ACCEPTANCE AND REFUSAL TO ACCEPT RECORD. (a) **Mandatory refusal to accept record.** ((★)) The filing office described in RCW 62A.9A-501(a)(2) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b) ((and)). A filing office described in RCW 62A.9A-501(a)(1) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b) (1) through (4) and any filing office may refuse to accept a record for filing only for a reason set forth in RCW 62A.9A-516(b).

(b) **Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in RCW 62A.9A-501(a)(2), in no event more than two business days after the filing office receives the record.

(c) **When filed financing statement effective.** A filed financing statement satisfying RCW 62A.9A-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, RCW 62A.9A-338 applies to a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

Sec. 40. RCW 62A.9A-523 and 2000 c 250 s 9A-523 are each amended to read as follows:

INFORMATION FROM FILING OFFICE; SALE OR LICENSE OF RECORDS. (a) **Acknowledgment of filing written record.** If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) **Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to RCW 62A.9A-519(a)(1); and

(3) The date and time of the filing of the record.

(c) **Communication of requested information.** The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) Has not lapsed under RCW 62A.9A-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under RCW 62A.9A-515 and a record of which is maintained by the filing office under RCW 62A.9A-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) **Medium for communicating information.** In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) **Timeliness of filing office performance.** The filing office described in RCW 62A.9A-501(a)(2) shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) **Public availability of records.** At least weekly, the filing office described in RCW 62A.9A-501(a)(2) shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. If information provided pursuant to this section includes a list of individuals, disclosure of the list is specifically authorized.

Sec. 41. RCW 62A.9A-608 and 2000 c 250 s 9A-608 are each amended to read as follows:

APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~((this section))~~ RCW 62A.9A-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under (1)(C) of this subsection.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under ~~((this section))~~ RCW 62A.9A-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Sec. 42. RCW 62A.9A-613 and 2000 c 250 s 9A-613 are each amended to read as follows:

CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

- (A) Describes the debtor and the secured party;
- (B) Describes the collateral that is the subject of the intended disposition;
- (C) States the method of intended disposition;
- (D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
- (E) States the time and place of a public ((~~sale~~)) disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in ((~~subsection~~)) subsection (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in ((~~subsection~~)) subsection (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by ((~~subsection~~)) subsection (1) of this section; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in RCW 62A.9A-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$_____]. You may request an accounting by calling us at [telephone number].

Sec. 43. RCW 62A.9A-615 and 2000 c 250 s 9A-615 are each amended to read as follows:

APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under RCW 62A.9A-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3) of this section.

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under ~~((this section))~~ RCW 62A.9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) [Reserved]

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Sec. 44. RCW 62A.9A-625 and 2000 c 250 s 9A-625 are each amended to read as follows:

REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH ARTICLE. (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article or by filing a false statement under RCW 62A.9A-607(b) or 62A.9A-619. Loss caused by a failure to comply (~~with a request under RCW 62A.9A-210~~) may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in RCW 62A.9A-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor (~~whose deficiency is eliminated or reduced under RCW 62A.9A-626~~) may not (~~otherwise~~) recover

under subsection (b) or (c)(2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance to the extent that its deficiency is eliminated or reduced under RCW 62A.9A-626.

(e) **Statutory damages: Noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with RCW 62A.9A-208;

(2) Fails to comply with RCW 62A.9A-209;

(3) Files a record that the person is not entitled to file under RCW 62A.9A-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c) within twenty days after the secured party receives an authenticated demand from a debtor;

(5) Fails to comply with RCW 62A.9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with RCW 62A.9A-616(b)(2).

(f) **Statutory damages: Noncompliance with RCW 62A.9A-210.** A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under RCW 62A.9A-210. A recipient of a request under RCW 62A.9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under RCW 62A.9A-210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: Noncompliance with RCW 62A.9A-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under RCW 62A.9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Sec. 45. RCW 62A.9A-628 and 2000 c 250 s 9A-628 are each amended to read as follows:

NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR. (a) **Limitation of liability (~~to debtor or obligor~~) of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability ((to debtor, obligor, another secured party, or lienholder)) based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under RCW 62A.9A-625(c)(2) for its failure to comply with RCW 62A.9A-616.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under RCW 62A.9A-625(c)(2) more than once with respect to any one secured obligation.

Sec. 46. RCW 62A.9A-702 and 2000 c 250 s 9A-702 are each amended to read as follows:

SAVINGS CLAUSE. (a) **Precffective-date transactions or liens.** Except as otherwise provided in this section, ((chapter 250, Laws of 2000)) Article 62A.9A RCW applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-703 through ((62A.9A-708)) section 53 of this act:

(1) Transactions and liens that were not governed by Article 62A.9 RCW, were validly entered into or created before July 1, 2001, and would be subject to ((chapter 250, Laws of 2000)) Article 62A.9A RCW if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by ((chapter 250, Laws of 2000)) Article

62A.9A RCW or by the law that otherwise would apply if (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW had not taken effect.

(c) **Preeffective-date proceedings.** (~~Chapter 250, Laws of 2000~~) Article 62A.9A RCW does not affect an action, case, or proceeding commenced before July 1, 2001.

Sec. 47. RCW 62A.9A-703 and 2000 c 250 s 9A-703 are each amended to read as follows:

SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. (a) **Continuing priority over lien creditor: Perfection requirements satisfied.** A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW if, (~~when {on or before}~~) on or before July 1, 2001, the applicable requirements for enforceability and perfection under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW are satisfied without further action.

(b) **Continuing priority over lien creditor: Perfection requirements not satisfied.** Except as otherwise provided in RCW 62A.9A-705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW are not satisfied (~~when {on or before}~~) on or before July 1, 2001, the security interest:

- (1) Is a perfected security interest for one year after July 1, 2001;
- (2) Remains enforceable thereafter only if the security interest becomes enforceable under RCW 62A.9A-203 before the year expires; and
- (3) Remains perfected thereafter only if the applicable requirements for perfection under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW are satisfied before the year expires.

Sec. 48. RCW 62A.9A-704 and 2000 c 250 s 9A-704 are each amended to read as follows:

SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) Remains an enforceable security interest for one year after July 1, 2001;
- (2) Remains enforceable thereafter if the security interest becomes enforceable under RCW 62A.9A-203 (~~when {on or before}~~) on or before July 1, 2001, or within one year thereafter; and
- (3) Becomes perfected:
 - (A) Without further action, (~~when {on or before}~~) on July 1, 2001, if the applicable requirements for perfection under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Sec. 49. RCW 62A.9A-705 and 2000 c 250 s 9A-705 are each amended to read as follows:

EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. (a) **Preeffective-date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW before the expiration of that period.

(b) **Preeffective-date filing.** The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under (~~chapter 250, Laws of 2000~~) Article 62A.9A RCW.

(c) **Preeffective-date filing in jurisdiction formerly governing perfection.** (~~Chapter 250, Laws of 2000~~) Article 62A.9A RCW does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former RCW ((62A.9A-103)) 62A.9-103. However, except as otherwise provided in subsections (d) and (e) of this section and RCW 62A.9A-706, the financing statement ceases to be effective at the earlier of:

- (1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) of this section to transmitting utility financing statement.** Subsection (c)(2) of this section applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former RCW ((62A.9A-103)) 62A.9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the

jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) **Application of Part 5.** A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

Sec. 50. RCW 62A.9A-706 and 2000 c 250 s 9A-706 are each amended to read as follows:

WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. (a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in RCW 62A.9A-501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under ~~((chapter 250, Laws of 2000))~~ Article 62A.9A RCW;

(2) The preeffective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(h) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in RCW 62A.9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after July 1, 2001, for the period provided in RCW 62A.9A-515 with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a) of this section.** To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective.

Sec. 51. RCW 62A.9A-707 and 2000 c 250 s 9A-707 are each amended to read as follows:

~~(PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:~~

~~(1) The secured party of record authorizes the filing; and~~

~~(2) The filing is necessary under this part:~~

~~—(A) To continue the effectiveness of a financing statement filed before July 1, 2001; or~~

~~—(B) To perfect or continue the perfection of a security interest.)~~

AMENDMENT OF PREEFFECTIVE-DATE FINANCING STATEMENT.

(a) Preeffective-date financing statement. In this section, "preeffective-date financing statement" means a financing statement filed before July 1, 2001.

(b) Applicable law. On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: General rule. Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended on or after July 1, 2001 only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in RCW 62A.9A-501;

(2) An amendment is filed in the office specified in RCW 62A.9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies RCW 62A.9A-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies RCW 62A.9A-706(c) is filed in the office specified in RCW 62A.9A-501.

(d) Method of amending: Continuation. If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under RCW 62A.9A-705 (d) and (f) or 62A.9A-706.

(e) Method of amending: Additional termination rule. Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies RCW 62A.9A-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

Sec. 52. RCW 62A.9A-708 and 2000 c 250 s 9A-708 are each amended to read as follows:

~~((PRIORITY. (a) Law governing priority. Chapter 250, Laws of 2000 determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, Article 62A.9 RCW determines priority.~~

~~(b) Priority if security interest becomes enforceable under RCW 62A.9A-203. For purposes of RCW 62A.9A-322(a), the priority of a security interest that becomes enforceable under RCW 62A.9A-203 dates from July 1, 2001, if the security interest is perfected under chapter 250, Laws of 2000 by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under Article 62A.9 RCW. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.)~~ **PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:**

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001; or

(B) To perfect or continue the perfection of a security interest.

NEW SECTION. Sec. 53. A new section is added to Article 62A.9A RCW, to be codified as RCW 62A.9A-709, to read as follows:

PRIORITY. (a) **Law governing priority.** Article 62A.9A RCW determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, Article 62A.9 RCW determines priority.

(b) **Priority if security interest becomes enforceable under RCW 62A.9A-203.** For purposes of RCW 62A.9A-322(a), the priority of a security interest that becomes enforceable under RCW 62A.9A-203 dates from July 1, 2001, if the security interest is perfected under Article 62A.9A RCW by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under Article 62A.9 RCW. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

NEW SECTION. Sec. 54. RCW 60.11.9001 (Transition rule for existing filings) and 2000 c 250 s 1 are each repealed.

NEW SECTION. Sec. 55. 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, 2001.

Passed the Senate March 7, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 33

[Senate Bill 5057]

CITIES AND TOWNS—PLANS OF GOVERNMENT

AN ACT Relating to cities and towns changing plans of government; amending RCW 35A.06.030, 35A.06.060, and 35A.08.030; and reenacting and amending RCW 35A.01.070.

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

Sec. 1. RCW 35A.01.070 and 1994 c 223 s 24 and 1994 c 81 s 66 are each reenacted and amended to read as follows:

Where used in this title with reference to procedures established by this title in regard to a change of plan or classification of government, unless a different meaning is plainly required by the context:

(1) "Classify" means a change from a city of the first or second class, an unclassified city, or a town, to a code city.

(2) "Classification" means either that portion of the general law under which a city or a town operates under Title 35 RCW as a first or second class city, unclassified city, or town, or otherwise as a code city.

(3) "Organize" means to provide for officers after becoming a code city, under the same general plan of government under which the city operated prior to becoming a code city, pursuant to RCW 35A.02.055.

(4) "Organization" means the general plan of government under which a city operates.

(5) "Plan of government" means a mayor-council form of government under chapter 35A.12 RCW, council-manager form of government under chapter 35A.13 RCW, or a mayor-council, council-manager, or commission form of government in general that is retained by a noncharter code city as provided in RCW 35A.02.130, without regard to variations in the number of elective offices or whether officers are elective or appointive.

(6) "Reclassify" means changing from a code city to the classification, if any, held by such a city immediately prior to becoming a code city.

(7) "Reclassification" means changing from city or town operating under Title 35 RCW to a city operating under Title 35A RCW, or vice versa; a change in classification.

(8) "Reorganize" means changing the plan of government under which a city or town operates to a different general plan of government (~~(, for which an election of new officers under RCW 35A.02.050 is required)~~). A city or town shall not be deemed to have reorganized simply by increasing or decreasing the number of members of its legislative body.

(9) "Reorganization" means a change in general plan of government (~~(where an election of all new officers is required in order to accomplish this change)~~) under which a city operates, but an increase or decrease in the number of members of its legislative body shall not be deemed to constitute a reorganization.

Sec. 2. RCW 35A.06.030 and 1994 c 223 s 28 are each amended to read as follows:

By use of the resolution for election or petition for election methods described in RCW 35A.06.040, any noncharter code city which has operated for more than six consecutive years under one of the optional plans of government authorized by this title, or for more than a combined total of six consecutive years under a particular plan of government both as a code city and under the same general plan under Title 35 RCW immediately prior to becoming a code city, may abandon such organization and may reorganize and adopt another plan of government authorized for noncharter code cities, but only after having been a noncharter code city for more than one year or a city after operating for more than six consecutive years under a particular plan of government as a noncharter code city: PROVIDED, That these limitations shall not apply to a city seeking to adopt a charter.

In reorganization under a different general plan of government as a noncharter code city, officers shall ~~((all be elected as provided in RCW 35A.02.050))~~ serve the remainder of their terms. If a city with a mayor-council plan of government is reorganized with a council-manager plan of government, the mayor shall serve as a councilmember for the remainder of his or her term. If a city with a council-manager plan of government is reorganized with a mayor-council plan of government, the mayor shall be elected as provided in RCW 35A.02.050. When a noncharter code city adopts a plan of government other than those authorized under Title 35A RCW, such city ceases to be governed under this optional municipal code ~~((and)),~~ shall be classified as a city or town of the class selected in the proceeding for adoption of such new plan, with the powers granted to such class under the general law, and shall elect officers as provided in RCW 35A.02.050.

Sec. 3. RCW 35A.06.060 and 1979 ex.s. c 18 s 16 are each amended to read as follows:

If a majority of votes cast at the election favor abandonment of the general plan of government under which the noncharter code city is then organized and reorganization under the different general plan proposed in the resolution or petition, the officers to be elected shall be those prescribed by the plan of government so adopted, and they shall be elected as provided in RCW ~~((35A.02.050))~~ 35A.06.030. ~~If the city is ((to remain a noncharter code city, or if the city is abandoning optional municipal code status, they))~~ adopting a plan of government other than those authorized under this title, the officers shall be elected at the next succeeding general municipal election. Upon the election, qualification, and assumption of office by such officers the reorganization of the government of such municipality shall be complete and such municipality shall thereafter be governed under such plan. If the plan so adopted is not a plan authorized for noncharter code cities, upon the election, qualification, and assumption of office by such officers the municipality shall cease to be a noncharter code city governed under the provisions of this optional municipal code and shall revert to the classification selected and shall be governed by the general laws relating to municipalities of such class with the powers conferred by law upon municipalities

of such class. Such change of classification shall not affect the then existing property rights or liabilities of the municipal corporation.

Sec. 4. RCW 35A.08.030 and 1967 ex.s. c 119 s 35A.08.030 are each amended to read as follows:

The legislative body of any city having ten thousand or more inhabitants may, by resolution, provide for submission to the voters of the question whether the city shall become a charter code city and be governed in accordance with a charter to be adopted by the voters under the provisions of this title. The legislative body must provide for such an election upon receipt of a sufficient petition therefor signed by qualified electors in number equal to not less than ten percent of the votes cast at the last general municipal election therein. The question may be submitted to the voters at the next general municipal election if one is to be held within one hundred and eighty days or at a special election held for that purpose not less than ninety nor more than one hundred and eighty days after the passage of the resolution or the filing of the certificate of sufficiency of the petition. At such election provision shall also be made for the election of fifteen freeholders who, upon a favorable vote on the question, shall constitute the charter commission charged with the duty of framing a charter for submission to the voters. If the vote in favor of adopting a charter receives forty percent or less of the total vote on the question of charter adoption, no new election on the question of charter adoption may be held for a period of two years from the date of the election in which the charter proposal failed.

Passed the Senate March 7, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 34

[Senate Bill 5061]

BUILDING ENGINEERING SYSTEMS—CONTRACTS

AN ACT Relating to awarding contracts for building engineering systems; and adding a new section to chapter 39.04 RCW.

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

NEW SECTION. Sec. I. A new section is added to chapter 39.04 RCW to read as follows:

(1) A state agency or local government may award contracts of any value for the design, fabrication, and installation of building engineering systems by: (a) Using a competitive bidding process or request for proposals process where bidders are required to provide final specifications and a bid price for the design, fabrication, and installation of building engineering systems, with the final specifications being approved by an appropriate design, engineering, and/or public regulatory body; or (b) using a competitive bidding process where bidders are

required to provide final specifications for the final design, fabrication, and installation of building engineering systems as part of a larger project with the final specifications for the building engineering systems portion of the project being approved by an appropriate design, engineering, and/or public regulatory body. The provisions of chapter 39.80 RCW do not apply to the design of building engineering systems that are included as part of a contract described under this section.

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

(a) "Building engineering systems" means those systems where contracts for the systems customarily have been awarded with a requirement that the contractor provide final approved specifications, including fire alarm systems, building sprinkler systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems.

(b) "Local government" means any county, city, town, school district, or other special district, municipal corporation, or quasi-municipal corporation.

(c) "State agency" means the department of general administration, the state parks and recreation commission, the department of fish and wildlife, the department of natural resources, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in building, renovation, remodeling, alteration, improvement, or repair activities.

Passed the Senate March 12, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 35

[Substitute Senate Bill 5118]

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

AN ACT Relating to the interstate compact for adult offender supervision; adding new sections to chapter 9.94A RCW; 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. This act shall be known and may be cited as the "interstate compact for adult offender supervision."

NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:

The interstate compact for adult offender supervision is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

**ARTICLE I
PURPOSE**

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article IV of this compact.

(n) "Victim" means a person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of criminal conduct against the person or a member of the person's family.

**ARTICLE III
THE COMPACT COMMISSION**

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

**ARTICLE IV
THE STATE COUNCIL**

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve

on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims' groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(c) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) To establish and maintain offices;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

- (k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;
- (l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (m) To establish a budget and make expenditures and levy dues as provided in article X of this compact;
- (n) To sue and be sued;
- (o) To provide for dispute resolution among compacting states;
- (p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
- (q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;
- (r) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity;
- (s) To establish uniform standards for the reporting, collecting, and exchanging of data.

**ARTICLE VI
ORGANIZATION AND OPERATION OF THE
INTERSTATE COMMISSION**

- (a) **Bylaws.** The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:
 - (1) Establishing the fiscal year of the interstate commission;
 - (2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:
 - (i) For the establishment of committees, and
 - (ii) Governing any general or specific delegation of any authority or function of the interstate commission;
 - (3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
 - (4) Establishing the titles and responsibilities of the officers of the interstate commission;
 - (5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;
 - (6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the

termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice-chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: **PROVIDED**, That subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

(d) **Qualified immunity, defense and indemnification.** (1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: **PROVIDED**, That nothing in this subsection (d)(1) shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: **PROVIDED**, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or

exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "government in sunshine act," 5 U.S.C. Sec. 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII
RULE MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C. Sec. 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule making record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;

(10) Mediation, arbitration and dispute resolution.

(f) The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII (b) of this compact.

ARTICLE X FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount

sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: PROVIDED, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and

minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW to read as follows:

(1) The sentencing guidelines commission shall serve as the state council for interstate adult offender supervision as required under article IV of section 2 of this act, the interstate compact for adult offender supervision. To assist the commission in performing its functions as the state council, the department of corrections shall provide staffing and support services. The commission may form a subcommittee, including members representing the legislative, judicial, and executive branches of state government, victims' groups, and the secretary of corrections, to perform the functions of the state council. Any such subcommittee shall include representation of both houses and at least two of the four largest political caucuses in the legislature.

(2) The commission, or a subcommittee if formed for that purpose, shall:

(a) Review department operations and procedures under section 2 of this act, and recommend policies to the compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the interstate commission created under article III of section 2 of this act;

(b) Report annually to the legislature on interstate supervision operations and procedures under section 2 of this act, including recommendations for policy changes; and

(c) Not later than December 1, 2004, report to the legislature on the effectiveness of its functioning as the state council under article IV of section 2 of this act, and recommend any legislation it deems appropriate.

(3) The commission, or a subcommittee if formed for that purpose, shall appoint one of its members, or an employee of the department designated by the secretary, to represent the state at meetings of the interstate commission created under article III of section 2 of this act when the compact administrator cannot attend.

NEW SECTION. Sec. 4. A new section is added to chapter 9.94A RCW to read as follows:

The secretary of corrections, or an employee of the department designated by the secretary, shall serve as the compact administrator under article IV of section 2 of this act, the interstate compact for adult offender supervision. The legislature intends that the compact administrator, representing the state on the interstate commission created under article III of section 2 of this act, will take an active role to assure that the interstate compact operates to protect the safety of the people and communities of the state.

NEW SECTION. Sec. 5. A new section is added to chapter 9.94A RCW to read as follows:

(1) The state shall continue to meet its obligations under RCW 9.95.270, the interstate compact for the supervision of parolees and probationers, to those states which continue to meet their obligations to the state of Washington under the interstate compact for the supervision of parolees and probationers, and have not approved the interstate compact for adult offender supervision after the effective date of this act.

(2) If a state withdraws from the interstate compact for adult offender supervision under article XII(a) of section 2 of this act, the state council for interstate adult offender supervision created by section 3 of this act shall seek to negotiate an agreement with the withdrawing state fulfilling the purposes of section 2 of this act, subject to the approval of the legislature.

(3) Nothing in this act limits the secretary's authority to enter into agreements with other jurisdictions for supervision of offenders.

NEW SECTION. Sec. 6. (1) 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, 2001.

(2) The interstate compact for adult offender supervision becomes effective and binding July 1, 2001, or on the date of enactment of the interstate compact for adult offender supervision by thirty-five jurisdictions, whichever is later. In determining that the compact has become effective and binding, the code reviser may rely on the written representation of the national institute of corrections of the United States department of justice.

Passed the Senate March 9, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 36

[Senate Bill 5121]

OFFICE OF MARINE SAFETY—TECHNICAL CORRECTIONS

AN ACT Relating to correcting references to the former office of marine safety; and amending RCW 42.17.2401, 43.21B.300, 43.21B.310, 88.16.010, and 88.16.110.

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

Sec. 1. RCW 42.17.2401 and 1996 c 186 s 504 are each amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) ~~The chief administrative law judge, the director of agriculture, ((the administrator of the office of marine safety;))~~ the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate

sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission.

Sec. 2. RCW 43.21B.300 and 1993 c 387 s 23 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330 shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department(~~(the administrator of the office of marine safety;)~~) or the local air authority, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department(~~(the administrator;)~~) or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department(~~(the administrator;)~~) or authority may remit or mitigate the penalty upon whatever terms the department(~~(the administrator;)~~) or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department(~~(the administrator;)~~) or authority thirty days after receipt by the person penalized of the notice imposing the penalty or thirty days after receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

- (a) Thirty days after receipt of the notice imposing the penalty;
- (b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or
- (c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department (~~(or the administrator)~~) within thirty days after it becomes due and payable, the attorney general, upon request of the department (~~(or the administrator)~~), shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account, created by RCW 70.105.180, and RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390.

Sec. 3. RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read as follows:

(1) Any order issued by the department (~~(; the administrator of the office of marine safety;)~~) or local air authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after receipt of the order. Except as provided under chapter 70.105D RCW, this is the exclusive means of appeal of such an order.

(2) The department (~~(; the administrator;)~~) or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

- (a) The appellant's name and address;
- (b) The date and docket number of the order, permit, or license appealed;
- (c) A description of the substance of the order, permit, or license that is the subject of the appeal;
- (d) A clear, separate, and concise statement of every error alleged to have been committed;
- (e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and
- (f) A statement setting forth the relief sought.

(5) Upon failure to comply with any final order of the department (~~or the administrator~~), the attorney general, on request of the department (~~or the administrator~~), may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of receipt.

Sec. 4. RCW 88.16.010 and 1991 c 200 s 1001 are each amended to read as follows:

(1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the ~~(administrator of the office of marine safety, or the administrator's)~~ director of the department of ecology, or the director's designee, and seven members appointed by the governor and confirmed by the senate. Each of the appointed commissioners shall be appointed for a term of four years from the date of the member's commission. No person shall be eligible for appointment to the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and one shall be from the Grays Harbor pilotage district. Two of the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of said shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote.

Sec. 5. RCW 88.16.110 and 1991 c 200 s 1004 are each amended to read as follows:

(1) Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or her or by any other person for the pilot or on the pilot's account or for his or her benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight tonnage, whether it was inward or outward bound, whether the amount so received, collected or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

(2) The report shall include information for each vessel that suffers a grounding, collision, or other major marine casualty that occurred while the pilot was on duty during the reporting period. The report shall also include information on near miss incidents as defined in RCW 88.46.100. Information concerning near miss incidents provided pursuant to this section shall not be used for imposing any sanctions or penalties. The board shall forward information provided under this subsection to the ~~((office of marine safety))~~ department of ecology for inclusion in the collision reporting system established under RCW 88.46.100.

Passed the Senate March 10, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 37

[Senate Bill 5145]

PUBLIC EMPLOYEES' RETIREMENT SYSTEM—EXEMPTIONS

AN ACT Relating to exempting trainers and trainees in housing authority resident training programs from membership in the public employees' retirement system; and reenacting and amending RCW 41.40.023.

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

Sec. 1. RCW 41.40.023 and 1999 c 286 s 2 and 1999 c 244 s 1 are each reenacted and 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:

(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;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(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 RCW 41.40.109, on or after July 25, 1999, 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 July 25, 1999, 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 serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county 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 the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, 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 upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date 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;

(19) 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;

(20) Beginning on the effective date of this section, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, if (a) the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan.

Passed the Senate March 10, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 16, 2001.

Filed in Office of Secretary of State April 16, 2001.

CHAPTER 38

[Substitute House Bill 1515]

HIGHER EDUCATION INSTITUTIONS—PUBLIC BIDS

AN ACT Relating to work performed for institutions of higher education; and amending RCW 28B.10.350.

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

Sec. 1. RCW 28B.10.350 and 2000 c 138 s 202 are each amended to read as follows:

(1) When the cost to The Evergreen State College, any regional university, or state university, of any building, construction, renovation, remodeling, or demolition other than maintenance or repairs will equal or exceed the sum of ~~((twenty-five))~~ thirty-five thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications: **PROVIDED**, That when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of twenty-five thousand dollars, such project shall be deemed a public works and "the prevailing rate of wage," under chapter 39.12 RCW shall be applicable thereto: **PROVIDED FURTHER**, That when such building, construction, renovation, remodeling, or demolition involves one trade or craft area and the estimated cost exceeds ~~((ten))~~ fifteen thousand dollars, complete plans and specifications for such work shall be prepared and such work shall be put out for public bids, and the contract shall be awarded to the lowest responsible bidder if in accordance with the bid specifications. This subsection shall not apply when a contract is awarded by the small works roster procedure authorized in RCW 39.04.155 or under any other procedure authorized for an institution of higher education.

(2) The Evergreen State College, any regional university, or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section.

(3) Where the estimated cost to The Evergreen State College, any regional university, or state university of any building, construction, renovation, remodeling, or demolition is less than twenty-five thousand dollars or the contract is awarded by the small works roster procedure authorized in RCW 39.04.155, the publication requirements of RCW 39.04.020 shall be inapplicable.

(4) In the event of any emergency when the public interest or property of The Evergreen State College, regional university, or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of such an emergency and reciting the facts constituting the same may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency: **PROVIDED**, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of such college or university

in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

Passed the House March 1, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 39

[Substitute House Bill 1632]

DIGITAL SIGNATURES—FRAUD

AN ACT Relating to fraudulently obtaining or using digital signatures and digital certificates; adding a new section to chapter 9.38 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9.38 RCW to read as follows:

(1) A person shall not knowingly misrepresent the person's identity or authorization to obtain a public key certificate used to reference a private key for creating a digital signature.

(2) A person shall not knowingly forge a digital signature as defined in RCW 19.34.020(16).

(3) A person shall not knowingly present a public key certificate for which the person is not the owner of the corresponding private key in order to obtain unauthorized access to information or engage in an unauthorized transaction.

(4) The definitions in RCW 19.34.020 apply to this section.

(5) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 40

[House Bill 1634]

INSURANCE—CLAIM DISTRIBUTION

AN ACT Relating to prioritizing and ordering the distribution of claims of an insurer's estate; amending RCW 48.31.280 and 48.31.260; and creating a new section.

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

Sec. I. RCW 48.31.280 and 1993 c 462 s 83 are each amended to read as follows:

The priority of distribution of claims from the insurer's estate is as follows:
Every claim in a class must be paid in full or adequate funds retained for payment

before the members of the next class receive any payment; no subclasses may be established within a class; and no claim by a shareholder, policyholder, or other creditor may circumvent the priority classes through the use of equitable remedies. The order of distribution of claims is:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(c) Necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) Authorized reasonable attorneys' fees and other professional services rendered in the rehabilitation and liquidation;

(f) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(2) Class 2. ~~((Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. The priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.~~

~~—(3) Class 3. Loss claims. For purposes of this section, "loss claims" are all claims under policies, including claims of the federal or a state or local government, for losses incurred, including third-party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, are loss claims. That portion of any loss indemnification that is provided for by other benefits or advantages recovered by the claimant, is not included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or a proceeds of life insurance, or as gratuities. No payment by an employer to his or her employee may be treated as a gratuity.~~

~~—(4) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such.~~

~~—(5) Class 5. Claims of the federal or any state or local government except those under subsection (3) of this section. Claims, including those of any governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs~~

occasioned thereby. The remainder of such claims are postponed to the class of claims under subsection (8) of this section:

~~— (6) Class 6. Claims filed late or any other claims other than claims under subsections (7) and (8) of this section:~~

~~— (7) Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.~~

~~— (8) Class 8. The claims of shareholders or other owners in their capacity as shareholders:)) Loss claims. For purposes of this section, loss claims are all claims under policies, including claims of the federal or a state or local government, for losses incurred, including third-party claims, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, are loss claims. That portion of any loss indemnification that is provided for by other benefits or advantages recovered by the claimant, is not included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to an employee may be treated as a gratuity. Loss claims also include claims under nonassessable policies for unearned premium or other premium refunds.~~

~~(3) Class 3. Claims of the federal government, other than claims which are included as loss claims under subsection (2) of this section.~~

~~(4) Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation; except, where there are no claims and no potential claims of the federal government in the estate, in which case claims in this class shall have priority over claims in class 2 and below. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.~~

~~(5) Class 5. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.~~

~~(6) Class 6. Claims of any state or local government, except those under subsection (2) of this section. Claims, including those of any governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims are postponed to the class of claims under subsection (9) of this section.~~

(7) Class 7. Claims filed late or any other claims other than claims under subsections (8) and (9) of this section.

(8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(9) Class 9. The claims of shareholders or other owners in their capacity as shareholders.

Sec. 2. RCW 48.31.260 and 1947 c 79 s .31.26 are each amended to read as follows:

The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of RCW 48.31.300 with respect to the rights of claimants holding contingent claims and RCW 48.31.280 with respect to the priority and order of distributions of claims.

NEW SECTION. Sec. 3. This act applies to and governs all claims filed in any proceeding to liquidate an insurer that is initiated on or after January 1, 2001.

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

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 41

[Substitute House Bill 1739]

ELECTIONS—VOTER PARTICIPATION

AN ACT Relating to protecting the integrity of elections; amending RCW 29.07.092, 29.07.440, 29.08.080, 29.10.125, 29.10.185, 29.60.030, 46.20.155, and 29.07.260; adding a new section to chapter 29.07 RCW; adding new sections to chapter 29.04 RCW; adding new sections to chapter 29.85 RCW; adding a new section to chapter 46.20 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud. The election registration laws and the voting laws of the state of Washington, and the requirements of this act, must be administered without discrimination based upon race, creed, color, national origin, sex, or political affiliation.

NEW SECTION. Sec. 2. A new section is added to chapter 29.07 RCW to read as follows:

An election officer or a person who intentionally disenfranchises an eligible citizen or discriminates against a person eligible to vote by denying voter registration is guilty of a misdemeanor punishable under RCW 9A.20.021.

NEW SECTION. Sec. 3. A new section is added to chapter 29.04 RCW to read as follows:

In order to encourage the broadest possible voting participation by all eligible citizens, the secretary of state shall produce voter registration information in the foreign languages required of state agencies. This information must be available no later than January 1, 2002.

NEW SECTION. Sec. 4. A new section is added to chapter 29.04 RCW to read as follows:

The secretary of state shall cause to be produced a "voter guide" detailing what constitutes voter fraud and discrimination under state election laws. This voter guide must be provided to every county election officer and auditor, and any other person upon request, no later than January 1, 2002.

NEW SECTION. Sec. 5. A new section is added to chapter 29.04 RCW to read as follows:

The secretary of state shall provide a toll-free media and web page designed to allow voter communication with the office of the secretary of state.

Sec. 6. RCW 29.07.092 and 1975 1st ex.s. c 184 s 1 are each amended to read as follows:

The county auditor shall acknowledge each new voter registration or transfer by providing or sending the voter a card identifying his current precinct and containing such other information as may be prescribed by the secretary of state. When a person who has previously registered to vote in a jurisdiction applies for voter registration in a new jurisdiction, the person shall provide on the registration form, all information needed to cancel any previous registration. The county auditor shall forward any information pertaining to the voter's prior voter registration to the county where the voter was previously registered, so that registration may be canceled. If the prior voter registration is in another state, the notification must be made to the state elections office of that state. A county auditor receiving official information that a voter has registered to vote in another jurisdiction shall immediately cancel that voter's registration.

Sec. 7. RCW 29.07.440 and 1994 c 57 s 28 are each amended to read as follows:

(1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents including information about age and citizenship requirements for voter registration.

(3) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(4) Each designated agency shall provide for the voter registration application forms to be collected from each agency office at least once each week. The agency shall then forward the application forms to the secretary of state each week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received by the secretary of state.

Sec. 8. RCW 29.08.080 and 1999 c 298 s 7 are each amended to read as follows:

The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the respective counties. All voter registration forms printed after January 1, 2002, must include clear and conspicuous language, designed to draw an applicant's attention, stating that the applicant must be a United States citizen in order to register to vote.

Sec. 9. RCW 29.10.125 and 1987 c 288 s 1 are each amended to read as follows:

Registration of a person as a voter is presumptive evidence of his or her right to vote at any primary or election, general or special. A person's right to vote may be challenged at the polls only by a precinct (~~election officer~~) judge or inspector. A challenge may be made only upon the belief or knowledge of the challenging officer that the voter is unqualified. The challenge must be supported by evidence or testimony given to the county canvassing board under RCW 29.10.127 and may not be based on unsupported allegations or allegations by anonymous third parties. The identity of the challenger, and any third person involved in the challenge, shall be public record and shall be announced at the time the challenge is made.

Challenges initiated by a registered voter must be filed not later than the day before any primary or election, general or special, at the office of the appropriate county auditor. A challenged voter may properly transfer or reregister until three days before the primary or election, general or special, by applying personally to the county auditor. Challenges may also be initiated by the office of the county prosecuting attorney and must be filed in the same manner as challenges initiated by a registered voter.

Sec. 10. RCW 29.10.185 and 1999 c 100 s 4 are each amended 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 or voting in more than one county in an election. 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.

If a voter is suspected of voting in two or more counties in an election, the county auditors in each county shall cooperate without delay to determine the voter's county of residence. The county auditor of the county of residence of the voter suspected of voting in two or more counties shall take action under section 12 of this act without delay.

Sec. 11. RCW 29.60.030 and 1992 c 163 s 5 are each amended to read as follows:

The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29.60.020;

(2) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(3) Maintain a record of those individuals who have received such training and certificates; and

(4) Provide the staffing and support services required by the board created under RCW 29.60.010.

NEW SECTION. **Sec. 12.** A new section is added to chapter 29.85 RCW to read as follows:

(1) A county auditor who suspects a person of fraudulent voter registration, vote tampering, or irregularities in voting shall transmit his or her suspicions and observations without delay to the canvassing board.

(2) The county auditor shall make a good faith effort to contact the person in question without delay. If the county auditor is unable to contact the person, or if, after contacting the person, the auditor still suspects fraudulent voter registration, vote tampering, or irregularities in voting, the auditor shall refer the issue to the county prosecuting attorney to determine if further action is warranted.

(3) When a complaint providing information concerning fraudulent voter registration, vote tampering, or irregularities in voting are presented to the office of the prosecuting attorney, that office shall file charges in all cases where warranted.

NEW SECTION. Sec. 13. A new section is added to chapter 29.85 RCW to read as follows:

A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a misdemeanor punishable under RCW 9A.20.021.

Sec. 14. RCW 46.20.155 and 1990 c 143 s 6 are each amended to read as follows:

Before issuing an original license or identification card or renewing a license or identification card under this chapter, the licensing agent shall determine if the applicant wants to register to vote or transfer his or her voter registration((-)) by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the agent shall state the following:

"I would like to remind you that you must be a United States citizen and at least eighteen years of age in order to vote."

The agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration.

NEW SECTION. Sec. 15. A new section is added to chapter 46.20 RCW to read as follows:

The department shall post signs at each driver licensing facility advertising the availability of voter registration services and advising of the qualifications to register to vote.

Sec. 16. RCW 29.07.260 and 1999 c 298 s 6 are each amended to read as follows:

(1) A person may register to vote, transfer a voter registration, or change his or her name for voter registration purposes when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote, transfer his or her voter registration, or change his or her name for voter registration purposes under this section, the applicant shall provide the following:

- (a) His or her full name;
 - (b) Whether the address in the driver's license file is the same as his or her residence for voting purposes;
 - (c) The address of the residence for voting purposes if it is different from the address in the driver's license file;
 - (d) His or her mailing address if it is not the same as the address in (c) of this subsection;
 - (e) Additional information on the geographic location of that voting residence if it is only identified by route or box;
 - (f) The last address at which he or she was registered to vote in this state;
 - (g) A declaration that he or she is a citizen of the United States; and
 - (h) Any other information, other than an applicant's social security number, that the secretary of state determines is necessary to establish the identity of the applicant and to prevent duplicate or fraudulent voter registrations.
- (3) The following warning shall appear in a conspicuous place on the voter registration form:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars, or both imprisonment and fine."

- (4) The applicant shall sign a portion of the form that can be used as an initiative signature card for the verification of petition signatures by the secretary of state and shall sign and attest to the following oath:

"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days before the next election at which I vote, and I will be at least eighteen years old when I vote."

- (5) The driver licensing agent shall record that the applicant has requested to register to vote or transfer a voter registration.

Passed the House March 13, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 42

[Engrossed House Bill 1864]

FAMILY LAW COURT FILES

AN ACT Relating to information requirements in family law court files; amending RCW 26.09.020, 26.21.305, 26.23.050, 26.23.055, and 26.26.130; creating a new section; and providing an effective date.

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

Sec. 1. RCW 26.09.020 and 1997 c 58 s 945 are each amended to read as follows:

(1) A petition in a proceeding for dissolution of marriage, legal separation, or for a declaration concerning the validity of a marriage~~((:))~~ shall allege ~~((the following))~~:

(a) The last known state of residence of each party, and if a party's last known state of residence is Washington, the last known county of residence;

~~((The social security number of each party;~~
~~—(c))~~) The date and place of the marriage;

~~((d))~~ (c) If the parties are separated the date on which the separation occurred;

~~((e))~~ (d) The names~~((:))~~ and ages~~((, and addresses))~~ of any child dependent upon either or both spouses and whether the wife is pregnant;

~~((f))~~ (e) Any arrangements as to the residential schedule of, decision making for, dispute resolution for, and support of the children and the maintenance of a spouse;

~~((g))~~ (f) A statement specifying whether there is community or separate property owned by the parties to be disposed of;

~~((h))~~ (g) The relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) The petitioner shall complete and file with the petition a certificate under RCW ~~((70.58.200))~~ 43.70.150 on the form provided by the department of health and the confidential information form under RCW 26.23.050.

Sec. 2. RCW 26.21.305 and 1993 c 318 s 311 are each amended to read as follows:

(1) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under RCW 26.21.315, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

(3) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter shall file a properly completed confidential information form or equivalent as described in RCW 26.23.050 to satisfy the requirements of subsection (1) of this section. A completed confidential

information form shall be deemed an "accompanying document" under subsection (1) of this section.

Sec. 3. RCW 26.23.050 and 1998 c 160 s 2 are each amended to read as follows:

(1) If the division of child support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) A statement that the receiving parent might be required to submit an accounting of how the support is being spent to benefit the child; and

(d) A statement that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the division of child support provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the division of child support's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320. All administrative orders shall also state that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that withholding action may be taken against wages, earnings, assets, or benefits if a support payment is past due or at any time after the entry of the order, or that a parent's licensing privileges may not be renewed, or may be suspended, the division of child support may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(b) That withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of a support order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) ~~((The social security number, residence address, date of birth, telephone number, driver's license number, and name and address of the employer of the responsible parent, except as provided under subsection (6) of this section;~~

~~—(g) The social security number and residence address of the physical custodian except as provided in subsection (6) or (7) of this section;~~

~~—(h)) The names((, dates of birth, and social security numbers, if any;)) and ages of the dependent children;~~

~~((f))~~ (g) A provision requiring the responsible parent to keep the Washington state support registry informed of whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

~~((f))~~ (h) That any parent owing a duty of child support shall be obligated to provide health insurance coverage for his or her child if coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related as provided under RCW 26.09.105;

~~((k))~~ (i) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the obligee or the department may seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under chapter 26.18 RCW;

~~((h))~~ (j) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

~~((m))~~ (k) That the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320; ~~(and~~

~~(n))~~ (l) That each parent must:

(i) ~~((Provide the state case registry with the information))~~ Promptly file with the court and update as necessary the confidential information form required by ((RCW 26.23.055)) subsection (7) of this section; and

(ii) ~~((Update the information provided to))~~ Provide the state case registry ((when)) and update as necessary the information ((changes)) required by subsection (7) of this section; and

~~(m) That parties to administrative support orders shall provide to the state case registry and update as necessary their residential addresses and the address of the responsible parent's employer. The division of child support may adopt rules that govern the collection of parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, the names of the children, social security numbers of the children, dates of birth of the children, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers to enforce an administrative support order. The division of child support shall not release this information if the division of child support determines that there is reason to believe that release of the information may result in physical or emotional harm to the party or to the child, or a restraining order or protective order is in effect to protect one party from the other party.~~

(6) ~~((The address and employer's name and address of either party may be omitted from a support order if:~~

~~(a) There is reason to believe that release of the address information may result in physical or emotional harm to the party or to the child; or~~

~~(b) A restraining or protective order is in effect to protect one party from the other party;~~

~~(7) The physical custodian's address shall be omitted from an order entered under the administrative procedure act.~~

~~(8) When a party's employment or address is omitted from an order, the order shall state that the information is known to the division of child support, state case registry;~~

~~(9))~~ After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW

74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

(7) All petitioners and parties to all court actions under Chapters 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, and 26.27 RCW shall complete to the best of their knowledge a verified and signed confidential information form or equivalent that provides the parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers. The clerk of the court shall not accept petitions, except in parentage actions initiated by the state, orders of child support, decrees of dissolution, or paternity orders for filing in such actions unless accompanied by the confidential information form or equivalent, or unless the confidential information form or equivalent is already on file with the court clerk. In lieu of or in addition to requiring the parties to complete a separate confidential information form, the clerk may collect the information in electronic form. The clerk of the court shall transmit the confidential information form or its data to the division of child support with a copy of the order of child support or paternity order, and may provide copies of the confidential information form or its data and any related findings, decrees, parenting plans, orders, or other documents to the state administrative agency that administers Title IV-A, IV-D, or IV-E of the federal social security act. In state initiated paternity actions, the parties adjudicated the parents of the child or children shall complete the confidential information form or equivalent or the state's attorney of record may complete that form to the best of the attorney's knowledge.

Sec. 4. RCW 26.23.055 and 1998 c 160 s 3 are each amended to read as follows:

(1) Each party to a paternity or child support proceeding must provide the court and the Washington state child support registry with ~~(his or her:~~

~~—(a) Social security number;~~

~~—(b) Current residential address;~~

~~—(c) Date of birth;~~

~~—(d) Telephone number;~~

~~—(e) Driver's license number; and~~

~~—(f) Employer's name, address, and telephone number)) the confidential information form as required under RCW 26.23.050.~~

(2) Each party to an order entered in a child support or paternity proceeding shall update the information required under subsection (1) of this section promptly after any change in the information. The duty established under this section continues as long as any monthly support or support debt remains due under the support order.

(3) In any proceeding to establish, enforce, or modify the child support order between the parties, a party may demonstrate to the presiding officer that he or she

has diligently attempted to locate the other party. Upon a showing of diligent efforts to locate, the presiding officer shall deem service of process for the action by delivery of written notice to the address most recently provided by the party under this section to be adequate notice of the action.

(4) All support orders shall contain notice to the parties of the obligations established by this section and possibility of service of process according to subsection (3) of this section.

Sec. 5. RCW 26.26.130 and 2000 c 119 s 10 are each amended to read as follows:

(1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. The judgment and order may include a continuing restraining order or injunction. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(4) The judgment and order shall contain ~~((the social security numbers of all parties to the order))~~ a provision that each party must file with the court and the Washington state child support registry and update as necessary the information required in the confidential information form required by RCW 26.23.050.

(5) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just. The court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(6) After considering all relevant factors, the court shall order either or both parents to pay an amount determined pursuant to the schedule and standards contained in chapter 26.19 RCW.

(7) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.

(8) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the department of social and health services or by a licensed agency, have had actual

custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

(9) In entering an order under this chapter, the court may issue any necessary continuing restraining orders, including the restraint provisions of domestic violence protection orders under chapter 26.50 RCW or antiharassment protection orders under chapter 10.14 RCW.

(10) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: **VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.**

(11) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(12) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

****NEW SECTION. Sec. 6. (1) The legislature's delegation of authority to an agency under this act is strictly limited to:***

(a) The minimum delegation necessary to administer the act's clear and unambiguous directives; and

(b) The administration of circumstances and behaviors foreseeable at the time of enactment.

(2) Agency actions or rules authorized by this act are subject to the following additional standards of judicial review, which supercede RCW 34.05.570 (1) and (2) to the extent of any conflict:

(a) Agencies bear the burden of demonstrating that the agency action:

(i) Was authorized by law; and

(ii) Was valid, when the interest of a party asserting invalidity arises from agency actions imposing a penalty on the asserting party;

(b) The validity of a rule may be determined upon petition for declaratory judgment addressed to any superior court in this state; and

(c) In determining whether, under RCW 34.05.570(2)(c), a rule exceeds the agency's statutory authority, the court must also consider whether the rule exceeds the limited delegation under subsection (1) of this section.

*Sec. 6 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 7. This act takes effect October 1, 2001.

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 March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 17, 2001, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 17, 2001.

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

"I am returning herewith, without my approval as to section 6, Engrossed House Bill No. 1864 entitled:

"AN ACT Relating to information requirements in family law court files;"

Engrossed House Bill No. 1864 provides valuable privacy protections for people involved in family court actions. It will help limit cases of identity theft and misuse of private information, particularly as court filings are made accessible on the Internet.

However, section 6 of EHB 1864 would place unrealistic and inappropriate limits on the authority of the DSHS Division of Child Support to make rules implementing the new privacy protection standards for administrative orders granted pursuant to section 3 of the bill. These restrictions are inconsistent with the requirements and standards of Chapter 34.05 RCW, the Administrative Procedure Act (APA). APA standards apply uniformly to all other rules adopted by the DSHS, and every other agency and division in state government. The requirements in section 6 of this bill would have subjected rules and actions adopted under this act to different, inconsistent standards.

It is important that rules and actions of state agencies be implemented and enforced uniformly. It is also important that the APA not be amended in a piecemeal way. To do so would create administrative confusion, make rules harder for the public to understand, and invite litigation.

Additionally, section 6 of EHB 1864 would have changed the burden of proof in court proceedings for certain agency actions. This would have reversed a long-standing legal principle governing the validity of agency actions, and could have created significant legal impediments for implementation of the program covered by the bill.

Section 6 also would have limited the agency's authority to implement the law to circumstances and behaviors known at the time of the bill's enactment. That would also subject the agency to an uncertain and ambiguous standard and invite litigation.

For these reasons, I have vetoed section 6 of Engrossed House Bill No. 1864. With the exception of section 6, Engrossed House Bill No. 1864 is approved."

CHAPTER 43

[House Bill 1983]

COLLECTION AGENCIES—DEFINITIONS

AN ACT Relating to the collection of financial claims; and amending RCW 19.16.100.

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

Sec. 1. RCW 19.16.100 and 1994 c 195 s 1 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to trust companies, savings and loan associations, building and loan associations, abstract companies doing an escrow business, real estate brokers, public officers acting in their official capacities, persons acting under court order, lawyers, insurance companies, credit unions, loan or finance companies, mortgage banks, and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account; ((or))

(e) An "out-of-state collection agency" as defined in this chapter, or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the

person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(5) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(6) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

(7) "Director" means the director of licensing.

(8) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(9) "Licensee" means any person licensed under this chapter.

(10) "Board" means the Washington state collection agency board.

(11) "Debtor" means any person owing or alleged to owe a claim.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 44

[Substitute Senate Bill 5219]

TRAVEL-RELATED BENEFITS—SALES

AN ACT Relating to sellers of travel-related benefits; amending RCW 19.138.021, 19.138.220, 19.138.100, and 19.138.160; and adding a new section to chapter 19.138 RCW.

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

Sec. 1. RCW 19.138.021 and 2000 c 171 s 73 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 licensing.

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

(3) "Sale of travel-related benefits" means the sale of travel services if the travel services are not identified at the time of the sale with respect to dates, price, or location and includes:

(a) Sales of travel club memberships;

(b) Sales of vacation certificates or other documents that purport to grant the holder of the certificate or other document the ability to obtain future travel services, with or without additional consideration; or

(c) Sales of travel-industry member benefits including those through either or both the issuance and sale or the consulting with or advising for consideration of persons in connection with the obtaining of international airlines travel agent network identification cards or memberships.

(4) "Travel club" means a seller of travel that sells memberships to consumers, where the initial membership or maintenance dues are at least twice the amount of the annual membership or maintenance dues.

(5) "Seller of travel-related benefits" means a person, firm, or corporation that transacts business with Washington consumers for the sale of travel-related benefits.

(6) "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers ~~((for travel services))~~.

(a) "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.

(b) "Seller of travel" does not include:

(i) An air carrier;

(ii) An owner or operator of a vessel, including an ocean common carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements of the federal maritime commission, 46 U.S.C. App. 817 (e), and a steamboat company whether or not operating over and upon the waters of this state;

(iii) A motor carrier;

(iv) A rail carrier;

(v) A charter party carrier of passengers as defined in RCW 81.70.020;

(vi) An auto transportation company as defined in RCW 81.68.010;

(vii) A hotel or other lodging accommodation;

(viii) An affiliate of any person or entity described in (i) through (vii) of this subsection ~~((~~(3)~~))~~ (6)(b) that is primarily engaged in the sale of travel services provided by the person or entity. For purposes of this subsection ~~((~~(3)~~))~~ (6)(b)(viii), an "affiliate" means a person or entity owning, owned by, or under common ownership, with "owning," "owned," and "ownership" referring to equity holdings of at least eighty percent;

(ix) Direct providers of transportation by air, sea, or ground, or hotel or other lodging accommodations who do not book or arrange any other travel services.

~~((4))~~ (7) "Travel services" includes transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

~~((5))~~ (8) "Advertisement" includes, but is not limited to, a written or graphic representation in a card, brochure, newspaper, magazine, directory listing, or display, and oral, written, or graphic representations made by radio, television, or cable transmission that relates to travel services.

~~((6))~~ (9) "Transacts business with Washington consumers" means to directly offer or sell travel services or travel-related benefits to Washington consumers, including the placement of advertising in media based in the state of Washington or that is primarily directed to Washington residents. Advertising placed in national print or electronic media alone does not constitute "transacting business with Washington consumers." Those entities who only wholesale travel services are not "transacting business with Washington consumers" for the purposes of this chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 19.138 RCW to read as follows:

(1) A contract for the sale of travel-related benefits may be canceled at the option of the purchaser if the purchaser sends notice of the cancellation by certified mail, return receipt requested, to the seller of travel-related benefits at the address contained in the contract and if the notice is postmarked not later than midnight of the seventh calendar day following the day on which the contract is signed or any membership card and all membership materials are received by the purchaser, whichever is later. In addition to this cancellation right, a purchaser who signs a contract for the sale of travel-related benefits of any description from a seller of travel-related benefits without having received the written disclosures required in subsection (2) of this section has cancellation rights until seven calendar days after the receipt of the written disclosures. A purchaser must request cancellation of a contract by sending the notice of cancellation by certified mail, return receipt requested, postmarked not later than midnight of the seventh calendar day following the day on which the contract is signed, any membership card and all membership materials are received by the purchaser, or the day on which the disclosures were actually received, whichever is later, to the seller of travel-related benefits at the address contained in the contract. The purchaser may use the cancellation form prescribed in subsection (2) of this section, however, notice of cancellation is sufficient if it indicates the intention of the purchaser not to be bound by the contract. The purchaser's right of cancellation of a contract for the sale of travel-related benefits may not be waived.

(2) A contract for the sale of travel-related benefits must include the following statement in at least ten-point bold-face type immediately before the space for the purchaser's signature:

"Purchaser's right to cancel: You may cancel this contract without any cancellation fee or other penalty, or stated reason for doing so, by sending notice of cancellation by certified mail, return receipt requested, to . . . (insert name of the seller of travel-related benefits) at the address indicated below. The notice must be postmarked by midnight of the seventh calendar day following the day on which this contract is signed by you or the day any membership card and all membership materials are received by you, whichever is later. The day on which the contract was signed is not included as a "calendar day," and if the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel this contract expires on the day immediately following that Sunday or legal holiday.

TO CANCEL THIS CONTRACT, SEND A COPY OF THIS NOTICE OF CANCELLATION OR OTHER WRITTEN NOTICE OF CANCELLATION TO:

.....
(Name of Seller)

.....
(Address of Seller)

(Date)

I HEREBY CANCEL THIS CONTRACT

(Date)

.....
(Purchaser's Signature)

.....
(Printed Name)

.....
(Purchaser's Address)"

(3) Within seven calendar days following timely receipt of notice of cancellation from the purchaser, the seller of travel-related benefits shall provide evidence that the contract has been canceled and return any money or other consideration paid by the purchaser. However, the seller of travel-related benefits may retain payments made for specific travel services utilized by the purchaser.

Sec. 3. RCW 19.138.220 and 1994 c 237 s 18 are each amended to read as follows:

The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin a ~~((person or entity selling travel services))~~ seller of travel for which registration is required by this chapter without registration on engaging in the practice until the required registration is secured. However, the injunction shall not relieve the person or entity selling travel services or selling travel-related benefits without registration from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

Sec. 4. RCW 19.138.100 and 1999 c 238 s 3 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 or travel-related benefits, 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. 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 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 processed by the registered seller of travel as required under this chapter.

Sec. 5. RCW 19.138.160 and 1994 c 237 s 14 are each amended to read as follows:

(1) A nonresident seller of travel soliciting business or selling travel in the state of Washington, by mail, telephone, or otherwise, either directly or indirectly, is deemed, absent any other appointment, to have appointed the director to be the seller of travel's true and lawful attorney upon whom may be served any legal process against that nonresident arising or growing out of a transaction involving travel services or the sale of travel-related benefits. That solicitation signifies the nonresident's agreement that process against the nonresident that is served as provided in this chapter is of the same legal force and validity as if served personally on the nonresident seller of travel.

(2) Service of process upon a nonresident seller of travel shall be made by leaving a copy of the process with the director. The fee for the service of process shall be determined by the director by rule. That service is sufficient service upon

the nonresident if the plaintiff or plaintiff's attorney of record sends notice of the service and a copy of the process by certified mail before service or immediately after service to the defendant at the address given by the nonresident in a solicitation furnished by the nonresident, and the sender's post office receipt of sending and the plaintiff's or plaintiff's attorney's affidavit of compliance with this section are returned with the process in accordance with Washington superior court civil rules. Notwithstanding the foregoing requirements, however, once service has been made on the director as provided in this section, in the event of failure to comply with the requirement of notice to the nonresident, the court may order that notice be given that will be sufficient to apprise the nonresident.

Passed the Senate March 9, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 45

[Substitute Senate Bill 5241]

VENUE

AN ACT Relating to venue; and amending RCW 3.66.040 and 4.12.020.

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

Sec. 1. RCW 3.66.040 and 1988 c 71 s 1 are each amended to read as follows:

(1) An action arising under RCW 3.66.020 (1), ~~((2) except for the recovery of possession of personal property;))~~ (4), (6), (7), and (9) may be brought in any district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed or in which the defendant, or if there be more than one defendant, where some one of the defendants may be served with the notice and complaint in which latter case, however, the district where the defendant or defendants is or are served must be within the county in which the ~~((said))~~ defendant or defendants reside. If the residence of the defendant is not ascertained by reasonable efforts, the action may be brought in the district in which the defendant's place of actual physical employment is located.

(2) An action arising under RCW 3.66.020(2) for the recovery of possession of personal property and RCW 3.66.020(8) shall be brought in the district in which the subject matter of the action or some part thereof is situated.

(3) An action arising under RCW 3.66.020 (3) and (5) shall be brought in the district in which the cause of action, or some part thereof arose.

(4) An action arising under RCW 3.66.020(2) for the recovery of damages for injuries to the person or for injury to personal property ~~((arising from a motor vehicle accident))~~ may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the

défendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed.

(5) An action against a nonresident of this state may be brought in any district where service of process may be had, or in which the cause of action or some part thereof arose, or in which the plaintiff or one of them resides.

(6) An action upon the unlawful issuance of a check or draft may be brought in any district in which the defendant resides or may be brought in any district in which the check was issued or presented as payment.

(7) For the purposes of chapters 3.30 through 3.74 RCW, the residence of a corporation defendant shall be deemed to be in any district where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served upon the corporation, unless herein otherwise provided.

Sec. 2. RCW 4.12.020 and 1941 c 81 s 1 are each amended to read as follows:

Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute;

(2) Against a public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of his or her office, or against a person who, by his or her command or in his or her aid, shall do anything touching the duties of such officer;

(3) For the recovery of damages (~~(arising from a motor vehicle accident, but in a cause arising because of motor vehicle accident)~~ for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

Passed the Senate March 9, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 46

[Senate Bill 5273]

ELECTIONS—FILING DATES

AN ACT Relating to election filing dates; and amending RCW 29.15.170, 29.15.180, 29.15.230, and 29.18.160.

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

Sec. 1. RCW 29.15.170 and 1975-76 2nd ex.s. c 120 s 10 are each amended to read as follows:

Filings for a nonpartisan office shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law whenever before the ~~((fourth))~~ sixth Tuesday prior to a primary:

- (1) A void in candidacy occurs;
- (2) A vacancy occurs in any nonpartisan office leaving an unexpired term to be filled by an election for which filings have not been held; or
- (3) A nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period.

Sec. 2. RCW 29.15.180 and 1975-76 2nd ex.s. c 120 s 11 are each amended to read as follows:

Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

- (1) A void in candidacy for such nonpartisan office occurs on or after the ~~((fourth))~~ sixth Tuesday prior to a primary but prior to the ~~((fourth))~~ sixth Tuesday before an election; or
- (2) A nominee for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten day period ~~((when a petition for write-in candidacy may be received))~~ immediately following the last day allotted for a candidate to withdraw; or
- (3) A vacancy occurs in any nonpartisan office on or after the ~~((fourth))~~ sixth Tuesday prior to a primary but prior to the ~~((fourth))~~ sixth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected.

Sec. 3. RCW 29.15.230 and 1981 c 180 s 2 are each amended to read as follows:

Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the ~~((fourth))~~ sixth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary ballot as if filed during the regular filing period.

Sec. 4. RCW 29.18.160 and 1977 ex.s. c 329 s 13 are each amended to read as follows:

A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the state central committee or comparable governing body of the appropriate political party.

Should such vacancy occur no later than the ~~((third))~~ sixth Tuesday prior to the state primary or general election concerned and the ballots ~~((and voting machine labels))~~ have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

Should such vacancy occur after the ~~((third))~~ sixth Tuesday prior to said state primary or general election and time does not exist in which to correct ~~((paper))~~ ballots (including absentee ballots) ~~((or voting machine labels))~~, either in total or in part, then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, he shall, in certifying candidates or nominations to the various county officers insert the name of the person appointed to fill a vacancy.

In the event that the secretary of state has already sent forth his certificate when the appointment to fill a vacancy is filed with him, he shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which he is a candidate or nominee, the party he represents and all other pertinent facts pertaining to the vacancy.

Passed the Senate March 14, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 47

[Senate Bill 5331]

COLLECTIONS—COMMERCIAL CLAIMS

AN ACT Relating to collection of business to business debts; and amending RCW 19.16.100 and 19.16.250.

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

Sec. 1. RCW 19.16.100 and 1994 c 195 s 1 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself in his own name;

(c) Any person who in attempting to collect or in collecting his own claim uses a fictitious name or any name other than his own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to trust companies, savings and loan associations, building and loan associations, abstract companies doing an escrow business, real estate brokers, public officers acting in their official

capacities, persons acting under court order, lawyers, insurance companies, credit unions, loan or finance companies, mortgage banks, and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account; or

(e) An "out-of-state collection agency" as defined in this chapter.

(4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state.

(5) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(6) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

(7) "Director" means the director of licensing.

(8) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(9) "Licensee" means any person licensed under this chapter.

(10) "Board" means the Washington state collection agency board.

(11) "Debtor" means any person owing or alleged to owe a claim.

(12) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

Sec. 2. RCW 19.16.250 and 1983 c 107 s 1 are each amended to read as follows:

No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking

account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (9)(e) of this section.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: **PROVIDED**, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: **PROVIDED**, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or

contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection (18) of this section, and, in the case of suit, attorney's fees and taxable court costs.

Passed the Senate March 12, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 48

[Senate Bill 5367]

COMMUNITY MOBILIZATION—GRANT PROGRAM

AN ACT Relating to removal of competitive grant requirements for community mobilization; amending RCW 43.270.010, 43.270.020, 43.270.070, and 43.270.080; and repealing RCW 43.270.030, 43.270.050, and 43.270.060.

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

Sec. 1. RCW 43.270.010 and 1989 c 271 s 315 are each amended to read as follows:

The legislature recognizes that state-wide efforts aimed at reducing the incidence of substance abuse, including alcohol, tobacco, or other drug abuse, or violence must be increased. The legislature further recognizes that the most effective strategy for reducing the impact of alcohol ~~((and)), tobacco, other drug abuse, and violence~~ is through the collaborative efforts of educators, law enforcement, local government officials, local treatment providers, and concerned community and citizens' groups.

The legislature intends to support the development and activities of community mobilization strategies against ~~((substance)) alcohol, tobacco, or other drug abuse, and violence~~, through the following efforts:

(1) ~~((Provide))~~ Providing funding support for prevention, treatment, and enforcement activities identified by communities that have brought together education, treatment, local government, law enforcement, and other key elements of the community;

(2) ~~((Provide))~~ Providing technical assistance and support to help communities develop and carry out effective activities; and

(3) ~~((Provide))~~ Providing communities with opportunities to share suggestions for state program operations and budget priorities.

Sec. 2. RCW 43.270.020 and 1989 c 271 s 316 are each amended to read as follows:

(1) There is established in the ((office of the governor)) department of community, trade, and economic development a grant program to provide incentive for and support for communities to develop targeted and coordinated strategies to reduce the incidence and impact of ((substance)) alcohol, tobacco, or other drug abuse, or violence.

(2) The department of community, trade, and economic development shall make awards, subject to funds appropriated by the legislature, under the following terms:

(a) Starting July 1, 2001, funds will be available to county-wide programs through a formula developed by the department of community, trade, and economic development in consultation with program contractors, which will take into consideration county population size.

(b) In order to be eligible for consideration, applicants must demonstrate, at a minimum:

(i) That the community has developed and is committed to carrying out a coordinated strategy of prevention, treatment, and law enforcement activities;

(ii) That the community has considered research-based theory when developing its strategy;

(iii) That proposals submitted for funding are based on a local assessment of need and address specific objectives contained in a coordinated strategy of prevention, treatment, and law enforcement against alcohol, tobacco, or other drug abuse, or violence;

(iv) Evidence of active participation in preparation of the proposal and specific commitments to implementing the community-wide agenda by leadership from education, law enforcement, local government, tribal government, and treatment entities in the community, and the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, prevention, education, or other community efforts provide direct, ongoing contact with substance abusers or those who exhibit violent behavior, or those at risk for alcohol, tobacco, or other drug abuse, or violent behavior;

(v) Evidence of additional local resources committed to the applicant's strategy totaling at least twenty-five percent of funds awarded under this section. These resources may consist of public or private funds, donated goods or services, and other measurable commitments, including in-kind contributions such as volunteer services, materials, supplies, physical facilities, or a combination thereof; and

(vi) That the funds applied for, if received, will not be used to replace funding for existing activities.

(c) At a minimum, grant applications must include the following:

(i) A definition of geographic area;

(ii) A needs assessment describing the extent and impact of alcohol, tobacco, or other drug abuse, and violence in the community, including an explanation of

those who are most severely impacted and those most at risk of substance abuse or violent behavior;

(iii) An explanation of the community-wide strategy for prevention, treatment, and law enforcement activities related to alcohol, tobacco, or other drug abuse, or violence, with particular attention to those who are most severely impacted and/or those most at risk of alcohol, tobacco, or other drug abuse, or violent behavior;

(iv) An explanation of who was involved in development of the strategy and what specific commitments have been made to carry it out;

(v) Identification of existing prevention, education, treatment, and law enforcement resources committed by the applicant, including financial and other support, and an explanation of how the applicant's strategy involves and builds on the efforts of existing organizations or coalitions that have been carrying out community efforts against alcohol, tobacco, or other drug abuse, or violence;

(vi) Identification of activities that address specific objectives in the strategy for which additional resources are needed;

(vii) Identification of additional local resources, including public or private funds, donated goods or services, and other measurable commitments, that have been committed to the activities identified in (c)(vi) of this subsection;

(viii) Identification of activities that address specific objectives in the strategy for which funding is requested;

(ix) For each activity for which funding is requested, an explanation in sufficient detail to demonstrate:

(A) Feasibility through deliberative design, specific objectives, and a realistic plan for implementation;

(B) A rationale for how this activity will achieve measurable results and how it will be evaluated;

(C) That funds requested are necessary and appropriate to effectively carry out the activity; and

(x) Identification of a contracting agent meeting state requirements for each activity proposed for funding.

Each contracting agent must execute a written agreement with its local community mobilization advisory board that reflects the duties and powers of each party.

(3) Activities ~~((which))~~ that may be funded through this grant program include those ~~((which))~~ that:

~~((+))~~ (a) Prevent ~~((substance))~~ alcohol, tobacco, or other drug abuse, or violence through educational ~~((and self-esteem))~~ efforts, development of positive alternatives, intervention with high-risk groups, and other prevention strategies;

~~((2))~~ (b) Support effective treatment by increasing access to and availability of treatment opportunities, particularly for underserved or highly impacted populations, developing aftercare and support mechanisms, and other strategies to increase the availability and effectiveness of treatment;

~~((3))~~ (c) Provide meaningful consequences for participation in illegal activity and promote safe and healthy communities through support of law enforcement strategies;

~~((4))~~ (d) Create or build on efforts by existing community programs, coordinate their efforts, and develop cooperative efforts or other initiatives to make most effective use of resources to carry out the community's strategy against ~~((substance)) alcohol, tobacco, or other drug abuse, or violence~~; and

~~((5))~~ (e) Other activities ~~((which)) that~~ demonstrate both feasibility and a rationale for how the activity will achieve measurable results in the strategy against ~~((substance)) alcohol, tobacco, or other drug abuse, or violence~~.

Sec. 3. RCW 43.270.070 and 1989 c 271 s 321 are each amended to read as follows:

The ~~((governor)) department of community, trade, and economic development~~ shall ask communities for suggestions on state practices, policies, and priorities that would help communities implement their strategies against ~~((substance)) alcohol, tobacco, or other drug abuse, or violence~~. The ~~((governor or appropriate agency officials)) department of community, trade, and economic development~~ shall review and respond to those suggestions making necessary changes where feasible, making recommendations to the legislature where appropriate, and providing an explanation as to why suggested changes cannot be accomplished, if the suggestions cannot be acted upon.

Sec. 4. RCW 43.270.080 and 1989 c 271 s 322 are each amended to read as follows:

The ~~((governor)) department of community, trade, and economic development~~ may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of RCW 43.270.010 through 43.270.080 and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

NEW SECTION. **Sec. 5.** The following acts or parts of acts are each repealed:

- (1) RCW 43.270.030 (Content of application) and 1989 c 271 s 317;
- (2) RCW 43.270.050 (Application requirements) and 1989 c 271 s 319; and
- (3) RCW 43.270.060 (Criteria for making awards) and 1989 c 271 s 320.

Passed the Senate March 9, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 49

[Senate Bill 5691]

JUVENILE RECORDS—MOTIONS TO SEAL

AN ACT Relating to limitations on sealing of juvenile offender records; amending RCW 13.50.050; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature intends to change the results of the holding of *State v. T. K.*, 139 Wn. 2d 320 (1999), and have any motion made after July 1, 1997, to seal juvenile records be determined by the provisions of RCW 13.50.050 in effect after July 1, 1997.

Sec. 2. RCW 13.50.050 and 1999 c 198 s 4 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.

(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.

(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.

(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 (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.

(12) The court shall not grant ((the)) any motion to seal records made pursuant to subsection (11) of this section ((if)) that is filed on or after July 1, 1997, unless 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.

(13) The person making a motion pursuant to subsection (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.

(14) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (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.

(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 (23) of this section.

(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.

(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 (23) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(18) If the court grants the motion to destroy records made pursuant to subsection (17) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (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.

(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.

(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.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (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.

(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.

(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.

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CHAPTER 50

[Substitute Senate Bill 5958]

LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

AN ACT Relating to the Washington life and disability insurance guaranty association act; adding new sections to chapter 48.32A RCW; and repealing RCW 48.32A.010, 48.32A.020, 48.32A.030, 48.32A.040, 48.32A.050, 48.32A.060, 48.32A.070, 48.32A.080, 48.32A.090, 48.32A.100, 48.32A.110, 48.32A.120, 48.32A.900, 48.32A.910, 48.32A.920, 48.32A.930, and 48.32A.931.

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

NEW SECTION. Sec. 1. SHORT TITLE. This chapter may be known and cited as the Washington life and disability insurance guaranty association act.

NEW SECTION. Sec. 2. PURPOSE. (1) The purpose of this chapter is to protect, subject to certain limitations, the persons specified in section 3(1) of this act against failure in the performance of contractual obligations, under life and disability insurance policies and annuity contracts specified in section 3(2) of this act, because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(2) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited by this chapter, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

NEW SECTION. Sec. 3. COVERAGE AND LIMITATIONS. (1) This chapter provides coverage for the policies and contracts specified in subsection (2) of this section as follows:

(a) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under (b) of this subsection;

(b) To persons who are owners of or certificate holders under the policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

(i) Are residents; or

(ii) Are not residents, but only under all of the following conditions:

(A) The insurer that issued the policies or contracts is domiciled in this state;

(B) The states in which the persons reside have associations similar to the association created by this chapter; and

(C) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law;

(c) For unallocated annuity contracts specified in subsection (2) of this section, (a) and (b) of this subsection do not apply, and this chapter, except as provided in (e) and (f) of this subsection, does provide coverage to:

(i) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(ii) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents;

(d) For structured settlement annuities specified in subsection (2) of this section, (a) and (b) of this subsection do not apply, and this chapter, except as provided in (e) and (f) of this subsection, does provide coverage to a person who

is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

- (i) Is a resident, regardless of where the contract owner resides; or
- (ii) Is not a resident, but only under both of the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident;

or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state; and the state in which the contract owner resides has an association similar to the association created by this chapter; and

(B) Neither the payee, nor beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;

(e) This chapter does not provide coverage to:

(i) A person who is a payee, or beneficiary, of a contract owner resident of this state, if the payee, or beneficiary, is afforded any coverage by the association of another state; or

(ii) A person covered under (c) of this subsection, if any coverage is provided by the association of another state to the person; and

(f) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of this subsection (1)(f) in situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) This chapter provides coverage to the persons specified in subsection (1) of this section for direct, nongroup life, disability, or annuity policies or contracts and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts. However, any annuity contracts that are unallocated annuity contracts are subject to the specific provisions in this chapter for unallocated annuity contracts.

(b) This chapter does not provide coverage for:

(i) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, disability, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as defined in 29 U.S.C. Sec. 1144;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) An unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

(viii) A portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;

(ix) A portion of a policy or contract to the extent that the assessments required by section 9 of this act with respect to the policy or contract are preempted by federal or state law;

(x) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(xi) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or

(xii) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subsection (2)(b)(xii), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Five hundred thousand dollars in life insurance death benefits, but not more than five hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In disability insurance benefits:

(I) Five hundred thousand dollars for coverages not defined as disability income insurance or basic hospital, medical, and surgical insurance or major medical insurance including any net cash surrender and net cash withdrawal values;

(II) Five hundred thousand dollars for disability income insurance;

(III) Five hundred thousand dollars for basic hospital medical and surgical insurance or major medical insurance; or

(C) Five hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values, except as provided in (ii), (iii), and (v) of this subsection (3)(b);

(ii) With respect to each individual participating in a governmental retirement benefit plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(iii) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, five hundred thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) However, in no event shall the association be obligated to cover more than: (A) An aggregate of five hundred thousand dollars in benefits with respect to any one life under (i), (ii), and (iii) of this subsection (3)(b) except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under (i)(B) of this subsection (3)(b), in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or (B) with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner;

(v) With respect to either: (A) One contract owner provided coverage under subsection (1)(d)(ii) of this section; or (B) one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in (ii) of this subsection (3)(b), five million dollars in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event shall the association be obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts; or

(vi) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to

covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under section 8 of this act, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

NEW SECTION. Sec. 4. CONSTRUCTION. This chapter shall be construed to effect the purpose under section 2 of this act.

NEW SECTION. Sec. 5. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means either of the two accounts created under section 6 of this act.

(2) "Association" means the Washington life and disability insurance guaranty association created under section 6 of this act.

(3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

(5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

(6) "Commissioner" means the insurance commissioner of this state.

(7) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 3 of this act.

(8) "Covered policy" means a policy or contract or portion of a policy or contract for which coverage is provided under section 3 of this act.

(9) "Extra-contractual claims" includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs.

(10) "Impaired insurer" means a member insurer which, after the effective date of this section, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(11) "Insolvent insurer" means a member insurer which, after the effective date of this section, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(12) "Member insurer" means an insurer licensed, or that holds a certificate of authority, to transact in this state any kind of insurance for which coverage is provided under section 3 of this act, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

- (a) A health care service contractor, whether profit or nonprofit;
- (b) A health maintenance organization;
- (c) A fraternal benefit society;
- (d) A mandatory state pooling plan;
- (e) A mutual assessment company or other person that operates on an assessment basis;
- (f) An insurance exchange;
- (g) An organization that has a certificate or license limited to the issuance of charitable gift annuities under RCW 48.38.010; or
- (h) An entity similar to (a) through (g) of this subsection.

(13) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or any successor thereto.

(14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. "Owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

(15) "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(16) "Plan sponsor" means:

- (a) The employer in the case of a benefit plan established or maintained by a single employer;
- (b) The employee organization in the case of a benefit plan established or maintained by an employee organization; or
- (c) In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(17) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the

portions of policies or contracts for which coverage is not provided under section 3(2) of this act, except that assessable premium shall not be reduced on account of sections 3(2)(b)(iii) of this act relating to interest limitations and section 3(3)(b) of this act relating to limitations with respect to one individual, one participant, and one contract owner. "Premiums" does not include:

(a) Premiums in excess of five million dollars on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code; or

(b) With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(18)(a) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(iv) The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in (a)(i) through (v) of this subsection.

However, in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state is the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan described in subsection (16)(c) of this section is the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, is the principal

place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

(20) "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business. Citizens of the United States that are either (a) residents of foreign countries, or (b) residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this chapter, are residents of the state of domicile of the insurer that issued the policies or contracts.

(21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, disability, or annuity policy or contract.

(24) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

NEW SECTION. Sec. 6. CREATION OF THE ASSOCIATION. (1) There is created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association which is composed of the commissioner ex officio and each member insurer. All member insurers must be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 10 of this act and shall exercise its powers through a board of directors established under section 7 of this act. For purposes of administration and assessment, the association shall maintain two accounts:

(a) The life insurance and annuity account which includes the following subaccounts:

(i) Life insurance account;

(ii) Annuity account which includes annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities; and

(iii) Unallocated annuity account, which excludes contracts owned by a governmental retirement benefit plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code; and

(b) The disability insurance account.

(2) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

NEW SECTION. **Sec. 7. BOARD OF DIRECTORS.** (1) The board of directors of the association consists of the commissioner ex officio and not less than five nor more than nine member insurers serving terms as established in the plan of operation. The insurer members of the board are selected by member insurers subject to the approval of the commissioner.

Vacancies on the board are filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board are not otherwise compensated by the association for their services.

NEW SECTION. **Sec. 8. POWERS AND DUTIES OF THE ASSOCIATION.** (1) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner:

(a) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(b) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under (a) of this subsection.

(2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(i)(A) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or

(b) Provide benefits and coverages in accordance with the following provisions:

(i) With respect to life and disability insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to the policies and contracts;

(B) With respect to nongroup policies, contracts, and annuities not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, thirty days notice of the termination of the benefits provided;

(iii) With respect to nongroup life and disability insurance policies and annuities covered by the association, make diligent efforts to make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make diligent efforts to make available substitute coverage on an individual basis in accordance with the provisions of (b)(iv) of this subsection, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class;

(iv)(A) The substitute coverage under (b)(iii) of this subsection, must be offered through a solvent, admitted insurer. In the alternative, the association in its discretion, and subject to any conditions imposed by the association and approved by the commissioner, may reissue the terminated coverage;

(B) Substituted coverage must be offered without requiring evidence of insurability, and may not provide for any waiting period or exclusion that would not have applied under the terminated policy;

(C) The association may reinsure any reissued policy;

(v) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vi) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued policy cease on the date

the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association; or

(vii) When proceeding under this subsection (2)(b) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 3(2)(b)(iii) of this act.

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(5) The protection provided by this chapter does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(6) In carrying out its duties under subsection (2) of this section, the association may:

(a) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, are in the public interest; and

(b) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(7) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, under RCW 48.31.171, shall be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and not retained under this subsection. Any amount so paid to the association less the amount not retained by it shall be treated as a distribution of estate assets under RCW 48.31.185 or similar provision of the state of domicile of the impaired or insolvent insurer.

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection (2) of this section, the commissioner has the powers and duties of the association under this chapter with respect to the insolvent insurer.

(9) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(10) The association has standing to appear or intervene before a court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Standing extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(11)(a) A person receiving benefits under this chapter is deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or

annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon the person.

(b) The subrogation rights of the association under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(c) In addition to (a) and (b) of this subsection, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the United States Internal Revenue Code.

(d) If (a) through (c) of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.

(12) In addition to the rights and powers elsewhere in this chapter, the association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 9 of this act and to settle claims or potential claims against it;

(c) Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;

(e) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(f) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or disability insurer, but in no case

may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;

(g) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(h) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(i) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(13) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(14)(a) At any time within one year after the coverage date, which is the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer, that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the association, under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election is effective when notice is provided to the receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association makes an election, the following provisions apply with respect to the agreements selected by the association:

(i) The association is responsible for all unpaid premiums due under the agreements, for periods both before and after the coverage date, and is responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association;

(ii) The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part. However, upon receipt of any such amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of: The amount received by the association, over the benefits paid by the association on account of the policy or contract, less the retention of the impaired or insolvent member insurer applicable to the loss or event;

(iii) Within thirty days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the

association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other within five days of the completion of this calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to (a)(ii) of this subsection, the receiver, rehabilitator, or liquidator shall remit the same to the association as promptly as practicable; and

(iv) If the association, within sixty days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association, in whole or in part, the reinsurer is not entitled to terminate the reinsurance agreements, insofar as the agreements relate to contracts covered by the association, in whole or in part, and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.

(b) In the event the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer succeeds to the rights and obligations of the association under (a) of this subsection effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in (a) of this subsection. However:

(i) The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(ii) The obligations described in (a)(ii) of this subsection no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and

(iii) This subsection (14)(b) does not apply if the association has previously expressly determined in writing that it will not exercise the election referred to in (a) of this subsection;

(c) The provisions of this subsection supersede the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator remains entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as set forth under this subsection, this subsection does not alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. This subsection does not abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This

subsection does not give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

(15) The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association provides the benefits of this chapter in an economical and efficient manner.

(16) When the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(17) Venue in a suit against the association arising under this chapter is in the county in which liquidation or rehabilitation proceedings have been filed in the case of a domestic insurer. In other cases, venue is in King county or Thurston county. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(18) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection (1) or (2) of this section, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(a) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for: (i) A fixed interest rate; (ii) payment of dividends with minimum guarantees; or (iii) a different method for calculating interest or changes in value;

(b) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(c) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

NEW SECTION. **Sec. 9. ASSESSMENTS.** (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments are due not less than thirty days after prior written notice to the member insurers and accrue interest at twelve percent per annum on and after the due date.

(2) There are two classes of assessments, as follows:

(a) Class A assessments are authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be

authorized and called whether or not related to a particular impaired or insolvent insurer; and

(b) Class B assessments are authorized and called to the extent necessary to carry out the powers and duties of the association under section 8 of this act with regard to an impaired or an insolvent insurer.

(3)(a) The amount of a class A assessment is determined by the board and may be authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. The total of all nonpro rata assessments may not exceed one hundred fifty dollars per member insurer in any one calendar year. The amount of a class B assessment may be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board to be fair and reasonable under the circumstances.

(b) Class B assessments against member insurers for each account and subaccount must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to premiums received on business in this state for those calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations are not always possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5)(a)(i) Subject to the provisions of (a)(ii) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health

account may not in one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(ii) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation in (a)(i) of this subsection must be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated under this section.

(iii) If the maximum assessment, together with the other assets of the association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this chapter.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment is insufficient to cover anticipated claims.

(c) If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the association, then under subsection (3)(b) of this section, the board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in (a) of this subsection.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses claims.

(7) Any member insurer may when determining its premium rates and policy owner dividends, as to any kind of insurance within the scope of this chapter, consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(8) The association shall issue to each insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(9)(a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment is available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment must be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(b) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess must be returned to the member company. Interest on a refund due a protesting member must be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

NEW SECTION. Sec. 10. PLAN OF OPERATION. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments are effective upon the commissioner's written approval or unless it has not been disapproved within thirty days.

(b) If the association fails to submit a suitable plan of operation within one hundred twenty days following the effective date of this section or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt reasonable rules as necessary or advisable to effectuate the provisions of this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation must, in addition to requirements enumerated elsewhere in this chapter:

(a) Establish procedures for handling the assets of the association;

- (b) Establish the amount and method of reimbursing members of the board of directors under section 7 of this act;
 - (c) Establish regular places and times for meetings including telephone conference calls of the board of directors;
 - (d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
 - (e) Establish the procedures whereby selections for the board of directors are made and submitted to the commissioner;
 - (f) Establish any additional procedures for assessments under section 9 of this act; and
 - (g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation may provide that any or all powers and duties of the association, except those under sections 8(12)(c) and 9 of this act, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization must be reimbursed for any payments made on behalf of the association and must be paid for its performance of any function of the association. A delegation under this subsection takes effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

NEW SECTION. Sec. 11. DUTIES AND POWERS OF THE COMMISSIONER. (1) In addition to the duties and powers enumerated elsewhere in this chapter, the commissioner shall:

- (a) Upon request of the board of directors, provide the association with a statement of the premiums in this and other appropriate states for each member insurer;
- (b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer constitutes notice to its shareholders, if any; the failure of the insurer to promptly comply with such a demand does not excuse the association from the performance of its powers and duties under this chapter; and
- (c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(2) In addition to the duties and powers enumerated elsewhere in this chapter, the commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent of the

unpaid assessment per month, but no forfeiture may be less than one hundred dollars per month.

(3) A final action by the board of directors of the association may be appealed to the commissioner by a member insurer if the appeal is taken within sixty days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(4) The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter.

NEW SECTION. Sec. 12. PREVENTION OF INSOLVENCIES. The commissioner shall aid in the detection and prevention of insurer insolvencies or impairments.

(1) It is the duty of the commissioner to:

(a) Notify the commissioners of all the other states, territories of the United States, and the District of Columbia within thirty days following the action taken or the date the action occurs, when the commissioner takes any of the following actions against a member insurer:

(i) Revocation of license;

(ii) Suspension of license; or

(iii) Makes a formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors;

(b) Report to the board of directors when the commissioner has taken any of the actions set forth in (a) of this subsection; or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner;

(c) Report to the board of directors when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer; and

(d) Furnish to the board of directors the national association of insurance commissioners insurance regulatory information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information must be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the commissioner regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. The reports and recommendations are not public documents.

(4) The board of directors may, upon majority vote, notify the commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

NEW SECTION. Sec. 13. CREDITS FOR ASSESSMENTS PAID—TAX OFFSETS. (1) A member insurer may offset against its premium tax liability to this state an assessment described in section 9(8) of this act to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(2) Any sums that are acquired by refund, under section 9(6) of this act, from the association by member insurers, and that have been offset against premium taxes as provided in subsection (1) of this section, must be paid by the insurers to the commissioner and then deposited with the state treasurer for credit to the general fund of the state of Washington. The association shall notify the commissioner that refunds have been made.

NEW SECTION. Sec. 14. MISCELLANEOUS PROVISIONS. (1) This chapter does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records must be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under section 8 of this act. The records of the association with respect to an impaired or insolvent insurer may not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under section 15 of this act.

(3) For the purpose of carrying out its obligations under this chapter, the association is a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under section 8(11) of this act. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should

have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4) As a creditor of the impaired or insolvent insurer as established in subsection (3) of this section, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association is entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(5)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and the policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration must be given to the welfare of the policy owners of the continuing or successor insurer.

(b) A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 8 of this act with respect to the insurer have been fully recovered by the association.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of (h) through (d) of this subsection.

(b) A distribution is not recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, is liable up to the amount of distributions which would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under (c) of this subsection is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

NEW SECTION. Sec. 15. EXAMINATION OF THE ASSOCIATION—ANNUAL REPORT. The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred eighty days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report.

NEW SECTION. Sec. 16. TAX EXEMPTIONS. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

NEW SECTION. Sec. 17. IMMUNITY. There is no liability on the part of and no cause of action of any nature may arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter. Immunity extends to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

NEW SECTION. Sec. 18. STAY OF PROCEEDINGS—REOPENING DEFAULT JUDGMENTS. All proceedings in which the insolvent insurer is a party in any court in this state are stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default the association may apply to have such a judgment set aside by the same court that made such a judgment and must be permitted to defend against the suit on the merits.

NEW SECTION. Sec. 19. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY ASSOCIATION ACT IN INSURANCE SALES—NOTICE TO POLICY OWNERS. (1) No person, including an insurer, agent, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or

inducement to purchase any form of insurance covered by the Washington life and disability insurance guaranty association act. However, this section does not apply to the Washington life and disability insurance guaranty association or any other entity which does not sell or solicit insurance.

(2) Within one hundred eighty days after the effective date of this section, the association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (3) of this section. This document must be submitted to the commissioner for approval. The document must also be available upon request by a policy owner. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

(3) The document prepared under subsection (2) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer must:

(a) State the name and address of the life and disability insurance guaranty association and insurance department;

(b) Prominently warn the policy or contract owner that the life and disability insurance guaranty association may not cover the policy or, if coverage is available, it is subject to substantial limitations and exclusions and conditioned on continued residence in this state;

(c) State the types of policies for which guaranty funds provide coverage;

(d) State that the insurer and its agents are prohibited by law from using the existence of the life and disability insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(e) State that the policy or contract owner should not rely on coverage under the life and disability insurance guaranty association when selecting an insurer;

(f) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and

(g) Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under chapter 42.17 RCW.

(4) A member insurer must retain evidence of compliance with subsection (2) of this section for as long as the policy or contract for which the notice is given remains in effect.

NEW SECTION. Sec. 20. PROSPECTIVE APPLICATION AND SAVINGS CLAUSE. (1) This chapter does not apply to any impaired insurer that

was under an order of rehabilitation or conservation, or to any insolvent insurer that was placed under an order of liquidation, prior to the effective date of this act.

(2) Any section repealed in this act pertaining to the powers and obligations of the association, reinsurance and guaranty of policies, assessments, and premium tax offsets shall apply to impaired insurers placed under an order of rehabilitation or conservation, and to insolvent insurers placed under an order of liquidation, prior to the effective date of this act.

NEW SECTION. Sec. 21. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 22. Sections 1 through 21 of this act are each added to chapter 48.32A RCW.

NEW SECTION. Sec. 23. The following acts or parts of acts are each repealed:

(1) RCW 48.32A.010 (Purpose) and 1994 c 149 s 1, 1990 c 51 s 1, & 1971 ex.s. c 259 s 1;

(2) RCW 48.32A.020 (Scope—Obligations of association) and 1996 c 98 s 1, 1994 c 149 s 2, 1990 c 51 s 2, & 1971 ex.s. c 259 s 2;

(3) RCW 48.32A.030 (Definitions) and 1996 c 98 s 2, 1994 c 149 s 3, 1990 c 51 s 3, & 1971 ex.s. c 259 s 3;

(4) RCW 48.32A.040 (Guaranty association created) and 1996 c 98 s 3 & 1971 ex.s. c 259 s 4;

(5) RCW 48.32A.050 (Powers of the association) and 1994 c 149 s 4 & 1971 ex.s. c 259 s 5;

(6) RCW 48.32A.060 (Reinsurance—Guaranty of policies—Contracts) and 1994 c 149 s 5, 1990 c 51 s 4, 1975 1st ex.s. c 133 s 2, & 1971 ex.s. c 259 s 6;

(7) RCW 48.32A.070 (Duplication of benefits prohibited) and 1994 c 149 s 6 & 1971 ex.s. c 259 s 7;

(8) RCW 48.32A.080 (Guaranty funds—Assessment of member insurers) and 1994 c 149 s 7, 1990 c 51 s 5, 1975-'76 2nd ex.s. c 119 s 5, & 1971 ex.s. c 259 s 8;

(9) RCW 48.32A.090 (Certificates of contribution—Allowance as asset—Offset against premium taxes) and 1997 c 300 s 2, 1993 sp.s. c 25 s 902, 1990 c 51 s 6, 1977 ex.s. c 183 s 2, 1975 1st ex.s. c 133 s 1, & 1971 ex.s. c 259 s 9;

(10) RCW 48.32A.100 (Taxation) and 1971 ex.s. c 259 s 10;

(11) RCW 48.32A.110 (Prohibited use of chapter) and 1971 ex.s. c 259 s 11;

(12) RCW 48.32A.120 (Recapture of excessive dividends to affiliates) and 1994 c 149 s 8 & 1971 ex.s. c 259 s 12;

(13) RCW 48.32A.900 (Short title) and 1971 ex.s. c 259 s 13;

(14) RCW 48.32A.910 (Construction—1971 ex.s. c 259) and 1971 ex.s. c 259 s 14;

(15) RCW 48.32A.920 (Section headings not part of law) and 1971 ex.s. c 259 s 15;

(16) RCW 48.32A.930 (Severability—1971 ex.s. c 259) and 1971 ex.s. c 259 s 17; and

(17) RCW 48.32A.931 (Severability—1990 c 51) and 1990 c 51 s 7.

Passed the Senate March 10, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 51

{Senate Bill 5972}

JUVENILE OFFENDERS—RELEASE

AN ACT Relating to clarifying the department of social and health services' parole program placement authority for all juvenile offenders under the age of twenty-one and committed to the department of social and health services; amending RCW 13.40.210; and declaring an emergency.

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

Sec. 1. RCW 13.40.210 and 1997 c 338 s 32 are each amended to read as follows:

(1) The secretary shall ~~((; except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030;))~~ set a release ~~((or discharge))~~ date for each juvenile committed to its custody. The release ~~((or discharge))~~ date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in

a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the (~~juvenile's~~) release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community service. Community service for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community service may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive

supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; and (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030.

(b) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section.

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 14, 2001.
Passed the House April 4, 2001.
Approved by the Governor April 17, 2001.
Filed in Office of Secretary of State April 17, 2001.

CHAPTER 52

[Engrossed Substitute Senate Bill 5995]
DEPENDENT CHILDREN—INFORMATION SHARING

AN ACT Relating to information sharing among the courts, providers, divisions, and agencies serving dependent children and their families; adding a new section to chapter 13.34 RCW; adding a new section to chapter 26.44 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. Recent analysis of the child dependency system following the death of Zy'Nyia Nobles indicated poor communication of relevant information from the courts, to the department, within programs between caseworkers, between divisions, among specialists, caregivers, and family. Appropriate service delivery necessitates communication of relevant information. Barriers to appropriate communication must be eliminated.

NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

In order to facilitate communication of information needed to serve the best interest of any child who is the subject of a dependency case filed under this chapter, the department of social and health services shall, consistent with state and federal law governing the release of confidential information, establish guidelines, and shall use those guidelines for the facilitation of communication of relevant information among divisions, providers, the courts, the family, caregivers, caseworkers, and others.

NEW SECTION. Sec. 3. A new section is added to chapter 26.44 RCW to read as follows:

A law enforcement agency in the course of investigating: (1) An allegation under RCW 69.50.401(a) relating to manufacture of methamphetamine; or (2) an allegation under RCW 69.50.440 relating to possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately.

NEW SECTION. Sec. 4. Nothing in this act shall be construed to create a private right of action or claim against the department of social and health services on the part of any individual or organization.

Passed the Senate March 13, 2001.
Passed the House April 4, 2001.
Approved by the Governor April 17, 2001.
Filed in Office of Secretary of State April 17, 2001.

CHAPTER 53

[Senate Bill 6022]

HORSE RACING—CAPITAL CONSTRUCTION REIMBURSEMENT

AN ACT Relating to changing from five years to fifteen years the time that certain amounts are awarded to owners and breeders; and amending RCW 67.16.102 and 67.16.175.

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

Sec. 1. RCW 67.16.102 and 1991 c 270 s 5 are each amended to read as follows:

(1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: **PROVIDED**, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars: **PROVIDED**, That the additional one percent of the gross receipts of all parimutuel machines at each race meet and the amount retained by the commission as specified in RCW 67.16.100(1)(~~(a)~~) shall be deposited daily in a time deposit by the commission and the interest derived therefrom shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less: **PROVIDED**, That prior to receiving a payment under this section any new race course shall meet the qualifications set forth in this section for a period of two years: **PROVIDED, FURTHER**, That said distributed funds shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(2) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of (~~(five)~~) fifteen years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section.

Sec. 2. RCW 67.16.175 and 1991 c 270 s 9 are each amended to read as follows:

(1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six

percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2) Of the amounts retained in subsection (1) of this section, one-sixth shall be used for Washington-bred breeder awards.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of ~~(five)~~ fifteen years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission.

Passed the Senate March 13, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 54

[Senate Bill 6109]

ELECTIONS—CONTRIBUTION REPORTING

AN ACT Relating to special reporting of independent expenditures and contributions occurring in close proximity to elections; amending RCW 42.17.105 and 42.17.175; adding a new section to chapter 42.17 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 42.17 RCW to read as follows:

(1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

(2) If a sponsor is required to file a special report under this section, the sponsor shall also deliver to the commission within the delivery period established in subsection (1) of this section a special report for each subsequent independent expenditure of any size supporting or opposing the same candidate who was the subject of the previous independent expenditure, supporting or opposing that candidate's opponent, or supporting or opposing the same ballot proposition that was the subject of the previous independent expenditure.

(3) The special report must include at least:

- (a) The name and address of the person making the expenditure;
- (b) The name and address of the person to whom the expenditure was made;
- (c) A detailed description of the expenditure;

(d) The date the expenditure was made and the date the political advertising was first published or otherwise presented to the public;

(e) The amount of the expenditure;

(f) The name of the candidate supported or opposed by the expenditure, the office being sought by the candidate, and whether the expenditure supports or opposes the candidate; or the name of the ballot proposition supported or opposed by the expenditure and whether the expenditure supports or opposes the ballot proposition; and

(g) Any other information the commission may require by rule.

(4) All persons required to report under RCW 42.17.080, 42.17.090, and 42.17.100 are subject to the requirements of this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100.

(5) The sponsor of independent expenditures supporting a candidate or opposing that candidate's opponent required to report under this section shall file with each required report an affidavit or declaration of the person responsible for making the independent expenditure that the expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or the candidate's agent, or with the encouragement or approval of the candidate, the candidate's authorized committee, or the candidate's agent.

Sec. 2. RCW 42.17.105 and 1995 c 397 s 4 are each amended to read as follows:

(1) Campaign treasurers shall prepare and deliver to the commission a special report regarding any contribution or aggregate of contributions which: ~~((Exceeds five hundred))~~ is one thousand dollars or more; is from a single person or entity; and is received during a special reporting period.

Any political committee making a contribution or an aggregate of contributions to a single entity which ~~((exceeds five hundred))~~ is one thousand dollars or more shall also prepare and deliver to the commission the special report if the contribution or aggregate of contributions is made during a special reporting period.

For the purposes of subsections (1) through (7) of this section:

(a) Each of the following intervals is a special reporting period: (i) The interval beginning after the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before a primary and concluding on the end of the day before that primary; and (ii) the interval composed of the twenty-one days preceding a general election; and

(b) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.

(2) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.

(3) Except as provided in subsection (4) of this section, the special report required by this section shall be delivered electronically or in written form, including but not limited to mailgram, telegram, or nightletter. The special report required of a contribution recipient by subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after: ~~The contribution ((exceeding five hundred))~~ of one thousand dollars or more is received by the candidate or treasurer; the aggregate received by the candidate or treasurer first ~~((exceeds five hundred))~~ equals one thousand dollars or more; or the subsequent contribution that must be reported under subsection (2) of this section is received by the candidate or treasurer. The special report required of a contributor by subsection (1) of this section or RCW 42.17.175 shall be delivered to the commission, and the candidate or political committee to whom the contribution or contributions are made, within twenty-four hours of the time, or on the first working day after: The contribution is made; the aggregate of contributions made first ~~((exceeds five hundred))~~ equals one thousand dollars or more; or the subsequent contribution that must be reported under subsection (2) of this section is made.

(4) The special report may be transmitted orally by telephone to the commission to satisfy the delivery period required by subsection (3) of this section if the written form of the report is also mailed to the commission and postmarked within the delivery period established in subsection (3) of this section or the file transfer date of the electronic filing is within the delivery period established in subsection (3) of this section.

(5) The special report shall include at least:

(a) The amount of the contribution or contributions;

(b) The date or dates of receipt;

(c) The name and address of the donor;

(d) The name and address of the recipient; and

(e) Any other information the commission may by rule require.

(6) Contributions reported under this section shall also be reported as required by other provisions of this chapter.

(7) The commission shall prepare daily a summary of the special reports made under this section and RCW 42.17.175.

(8) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for state-wide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a bona fide political party as defined in this chapter, excluding the county central committee or legislative district committee.

(9) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17.135.

Sec. 3. RCW 42.17.175 and 1991 c 157 s 2 are each amended to read as follows:

Any lobbyist registered under RCW 42.17.150, any person who lobbies, and any lobbyist's employer making a contribution or an aggregate of contributions to a single entity that (~~exceeds five hundred~~) is one thousand dollars or more during a special reporting period before a primary or general election, as such period is specified in RCW 42.17.105(1), shall file one or more special reports for the contribution or aggregate of contributions and for subsequent contributions made during that period under the same circumstances and to the same extent that a contributing political committee must file such a report or reports under RCW 42.17.105. Such a special report shall be filed in the same manner provided under RCW 42.17.105 for a special report of a contributing political committee.

NEW SECTION. **Sec. 4.** This act takes effect January 1, 2002.

Passed the Senate March 14, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.

CHAPTER 55

[House Bill 1419]

IGNITION INTERLOCK DEVICES—DRIVING RECORDS

AN ACT Relating to drivers required to use ignition interlock or other biological or technical devices; amending RCW 46.20.740; and prescribing penalties.

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

Sec. 1. RCW 46.20.740 and 1997 c 229 s 10 are each amended to read as follows:

(1) The department shall attach or imprint a notation on the (~~driver's license~~) driving record of any person restricted under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with an ignition interlock or other biological or technical device.

(2) It is a misdemeanor for a person with such a notation on his or her ~~((driver's license))~~ driving record to operate a motor vehicle that is not so equipped.

Passed the House March 12, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 56

[House Bill 1547]

INSURANCE AGENTS—LICENSING

AN ACT Relating to licensing insurance agents, brokers, solicitors, and adjusters; and amending RCW 48.17.090 and 48.17.330.

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

Sec. 1. RCW 48.17.090 and 1982 c 181 s 6 are each amended to read as follows:

(1) Application for any such license shall be made to the commissioner upon forms as prescribed and furnished by ~~((him))~~ the commissioner. As a part of or in connection with any such application the applicant shall furnish information concerning his or her identity, including ~~((his))~~ fingerprints, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require.

(2) Persons resident in the United States but not in Washington may apply for such a license on a form prepared by the national association of insurance commissioners or others, if those forms are approved by the commissioner by rule. An applicant shall also furnish any other information required to be submitted but not provided for in that form.

(3) Any person willfully misrepresenting any fact required to be disclosed in any such application shall be liable to penalties as provided by this code.

~~((4))~~ (4) If in the process of verifying fingerprints, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of such fees or charges shall be paid to the commissioner's office by the applicant and shall be considered the recovery of a previous expenditure.

Sec. 2. RCW 48.17.330 and 1973 1st ex.s. c 107 s 1 are each amended to read as follows:

(1) The commissioner may license as an agent or as a broker, a person ~~((who is otherwise qualified therefor under this code but))~~ who is not a resident of or domiciled in this state and who holds a corresponding license issued by the state or province of his or her residence or domicile, subject to RCW 48.17.530, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of or corporations domiciled in this state. As used in this section, "state" means a state of the United States, the District of

Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and "province" means a province of Canada.

(2) Any such licensee shall be subject to the same obligations and limitations, and to the commissioner's supervision as though resident or domiciled in this state, subject to RCW 48.14.040.

(3) No such person shall be so licensed unless he or she files the power of attorney provided for in RCW 48.17.340, and, if a corporation, it must have complied with the laws of this state governing the admission of foreign corporations.

Passed the House March 9, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 57

[Substitute House Bill 1763]

INSURANCE INFORMATION—CONFIDENTIALITY

AN ACT Relating to protecting the confidentiality of information relating to insurance; adding a new section to chapter 48.02 RCW; 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 48.02 RCW to read as follows:

(1) Documents, materials, or other information as described in subsection (5) of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.17 RCW and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and section 2 of this act applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

NEW SECTION. Sec. 2. A new section is added to chapter 42.17 RCW to read as follows:

Documents, materials, or information obtained by the insurance commissioner under section 1 of this act are confidential and privileged and not subject to public disclosure under this chapter.

Passed the House March 14, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 58

[House Bill 1943]

COUNTY RAIL DISTRICTS

AN ACT Relating to county rail districts; and amending RCW 36.60.010.

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

Sec. 1. RCW 36.60.010 and 1985 c 187 s 1 are each amended to read as follows:

Subject to RCW 36.60.020, the legislative authority of a county may establish one or more county rail districts within the county for the purpose of providing and funding improved rail freight or passenger service, or both. The boundaries of county rail districts shall be drawn to include contiguous property in an area from which agricultural or other goods could be shipped by the rail service provided. The district shall not include property outside this area which does not, or, in the judgment of the county legislative authority, is not expected to produce goods which can be shipped by rail, or property substantially devoted to fruit crops or producing goods that are shipped in a direction away from the district. A county rail district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

A county rail 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, to accept and expend or use gifts, grants, and donations, and to sue and be sued.

The county legislative authority shall be the governing body of a county rail district. The county treasurer shall act as the ex officio treasurer of the county rail district. The electors of a district are all registered voters residing within the district.

This authority and that provided in RCW 36.60.030 may only be exercised outside the boundaries of the county rail district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the county legislative authority exercising such authority, to be reasonably necessary to link the rail services, equipment, and facilities within the rail district to an interstate railroad system; however, if such extraterritorial rail services, equipment, or facilities are in or are to be located in one or more other counties, the legislative authority of such other county must consent by resolution to the proposed plan of the originating county which consent shall not be unreasonably withheld.

Passed the House March 9, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 59

[Substitute House Bill 2221]

FERRIES—MAINTENANCE

AN ACT Relating to maintenance and preservation of ferries; and amending RCW 47.56.030.

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

Sec. 1. RCW 47.56.030 and 1995 1st sp.s. c 4 s 1 are each amended to read as follows:

(1) The department of transportation shall have full charge of the construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof. The transportation commission shall determine and establish the tolls and charges thereon, and shall perform all duties and exercise all powers relating to the financing, refinancing, and fiscal management of all toll bridges and other toll facilities including the Washington state ferries, and bonded indebtedness in the manner provided by law. The department shall have full charge of design of all toll facilities. Except as provided in this section, the department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid under (a) and (b) of this subsection:

(a) Emergency contracts, in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities; and

(b) Single source contracts for vessel dry dockings, when there is clearly and legitimately only one available bidder to conduct dry dock-related work for a specific class or classes of vessels. The contracts may be entered into for a single vessel dry docking or for multiple vessel dry dockings for a period not to exceed two years.

(2) The department shall proceed with the procurement of materials, supplies, services, and equipment needed for the support, maintenance, and use of a ferry, ferry terminal, or other facility operated by Washington state ferries, in accordance with chapter 43.19 RCW except as follows:

~~((+))~~ (a) Except as provided in (d) of this subsection, when the secretary of the department of transportation determines in writing that the use of invitation for bid is either not practicable or not advantageous to the state and it may be necessary to make competitive evaluations, including technical or performance evaluations among acceptable proposals to complete the contract award, a contract may be entered into by use of a competitive sealed proposals method, and a formal request for proposals solicitation. Such formal request for proposals solicitation shall include a functional description of the needs and requirements of the state and the significant factors.

~~((2))~~ (b) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a proposal that are not specified in the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price; maintainability; reliability; commonality; performance levels; life cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

~~((a))~~ (i) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

~~((b))~~ (ii) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

~~((c))~~ (iii) Whether the proposer can perform the contract within the time specified;

~~((d))~~ (iv) The quality of performance of previous contracts or services;

~~((e))~~ (v) The previous and existing compliance by the proposer with laws relating to the contract or services;

~~((f))~~ (vi) Objective, measurable criteria defined in the request for proposal. These criteria may include but are not limited to items such as discounts, delivery costs, maintenance services costs, installation costs, and transportation costs; and

~~((g))~~ (vii) Such other information as may be secured having a bearing on the decision to award the contract.

(c) When purchases are made through a request for proposal process, proposals received shall be evaluated based on the evaluation factors set forth in the request for proposal. When issuing a request for proposal for the procurement of propulsion equipment or systems that include an engine, the request for proposal must specify the use of a life cycle cost analysis that includes an evaluation of fuel efficiency. When a life cycle cost analysis is used, the life cycle cost of a proposal shall be given at least the same relative importance as the initial price element specified in the request of proposal documents. The department may reject any and all proposals received. If the proposals are not rejected, the award shall be made to the proposer whose proposal is most advantageous to the department, considering price and the other evaluation factors set forth in the request for proposal.

~~((3) The legislative transportation committee shall review the secretary's use of the request for proposals solicitation for Washington state ferries projects to determine if the process established under chapter 4, Laws of 1995 1st sp. sess. is appropriate. The results of the review, including recommendations for modification of the request for proposal process, shall be reported to the house of representatives and senate transportation committees by January 1, 1997.)~~

(d) If the department is procuring large equipment or systems (e.g., electrical, propulsion) needed for the support, maintenance, and use of a ferry operated by Washington state ferries, the department shall proceed with a formal request for proposal solicitation under this subsection (2) without a determination of necessity by the secretary.

Passed the House March 12, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 60

[Senate Bill 5054]

TRUSTS—RULE AGAINST PERPETUITIES

AN ACT Relating to the rule against perpetuities; amending RCW 11.98.130, 11.98.140, and 11.98.150; and creating a new section.

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

Sec. 1. RCW 11.98.130 and 1985 c 30 s 55 are each amended to read as follows:

~~((If any))~~ No provision of an instrument creating a trust, including the provisions of any further trust created, ~~((or any))~~ and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument ~~((violates))~~ is invalid under the rule against perpetuities, ~~((neither such provision nor any other provisions of the trust, or such further trust or other disposition, is thereby rendered invalid during any of the following periods:~~

~~— (1) The twenty-one))~~ or any similar statute or common law, during the one hundred fifty years following the effective date of the instrument.

~~((2) The period measured by any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such life or lives;~~

~~— (3) The period measured by any portion of any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such portion of such life or lives; and~~

~~— (4) The twenty-one years following the expiration of the periods specified in (2) and (3) above;))~~

Thereafter, unless the trust assets have previously become distributable or vested, the provision or other disposition of property is deemed to have been rendered invalid under the rule against perpetuities,

Sec. 2. RCW 11.98.140 and 1985 c 30 s 56 are each amended to read as follows:

If, during ~~((any period in which))~~ the one hundred fifty years following the effective date of an instrument creating a trust, ~~((as described in RCW 11.98.130;~~

~~or any provision thereof, is not to be rendered invalid by the rule against perpetuities;))~~ any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition.

Sec. 3. RCW 11.98.150 and 1985 c 30 s 57 are each amended to read as follows:

If, at the ~~((expiration of any period in which))~~ end of the one hundred fifty years following the effective date of an instrument creating a trust, ~~((as described in RCW 11.98.009, or any provision thereof, is not to be rendered invalid by the rule against perpetuities;))~~ any of the trust assets have not by the terms of the trust instrument become distributable or vested, then the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment.

NEW SECTION. Sec. 4. This act applies to any irrevocable trust with an effective date on or after January 1, 2002. Unless the trust instrument otherwise provides, this act does not apply to: (1) Any irrevocable trust with an effective date prior to January 1, 2002; or (2) a revocable inter vivos trust or testamentary trust with an effective date on or after January 1, 2002, if at all times after the date of enactment the creator of the revocable inter vivos trust or testamentary trust was not competent to revoke, amend, or modify the instrument.

Passed the Senate March 6, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 61

[Senate Bill 5206]

GEOLOGY—EFFECTIVE DATES

AN ACT Relating to the practice of geology; amending RCW 18.220.901; and declaring an emergency.

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

Sec. 1. RCW 18.220.901 and 2000 c 253 s 23 are each amended to read as follows:

(1) Sections 1 ((through 21)), 3, 7, 9, 10, 11, 12, 14, 15, 16, 17, 20, and 21 of this act take effect July 1, 2001.

(2) Sections 2, 18, and 19 of this act take effect July 1, 2002.

(3) Sections 4, 5, 6, 8, and 13 of this act take effect April 1, 2001.

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 6, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 62

[Substitute Senate Bill 5224]

INTERCITY PASSENGER RAIL SERVICE

AN ACT Relating to intercity passenger rail service; adding new sections to chapter 47.79 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that a balanced, multimodal transportation system is an essential element of the state's infrastructure, and that effective rail passenger service is an integral part of a balanced, multimodal transportation system. The legislature further finds that the King Street railroad station is the key hub for both Puget Sound's intermodal passenger transportation system and the state's rail passenger system. The legislature recognizes that the redevelopment of the King Street railroad station depot, along with necessary and related properties, is critical to its continued functioning as a transportation hub and finds that innovative funding arrangements can materially assist in furthering the redevelopment at reduced public expense.

NEW SECTION. Sec. 2. The department may acquire, or contract to acquire, by purchase, lease, option to lease or purchase, condemnation, gift, devise, bequest, grant, or exchange of title, the King Street railroad station depot located in Seattle, or any interests or rights in it, and other real property and improvements adjacent to, or used in association with, the King Street railroad station depot. The property may include, but not be limited to, the depot, platforms, parking areas, pedestrian and vehicle access areas, and maintenance facilities. These properties, in the aggregate, will be known as the King Street railroad station.

NEW SECTION. Sec. 3. During all periods that the department contracts to own or lease some, or all, of the King Street railroad station properties, the department may exercise all the powers and perform all the duties necessary, convenient, or incidental for planning, designing, constructing, improving, repairing, renovating, restoring, operating, and maintaining the King Street railroad station properties. These powers also include authority to lease or sell, assign, sublease, or otherwise transfer all, or portions of, the King Street railroad station

properties for transportation or other public or private purposes and to contract with other public or private entities for the operation, administration, maintenance, or improvement of the King Street railroad station properties after the department takes possession of some, or all, of the properties, as the secretary deems appropriate. If the department transfers any of its fee ownership interests in the King Street railroad station properties, proceeds from the transaction must be placed in an account that supports multimodal programs, but not into an account restricted by Article II, section 40 of the state Constitution.

NEW SECTION. Sec. 4. To facilitate tax exempt financing for the acquisition and improvement of the King Street railroad station, the department may lease from or contract with public or private entities for the acquisition, lease, operation, maintenance, financing, renovation, restoration, or management of some, or all, of the King Street railroad station properties as a multimodal terminal that supports the state intercity passenger rail service. The leases or contracts are not subject to either chapter 39.94 or 43.82 RCW. The leases and contracts will expire no later than fifty years from the time they are executed, and at that time the department will either receive title or have the right to receive title to the financed property without additional obligation to compensate the owner of those properties for the acquisition of them. The secretary may take all actions necessary, convenient, or incidental to the financing.

NEW SECTION. Sec. 5. (1) The department may establish the King Street railroad station facility account as an interest-bearing local account. Receipts from the sources listed in subsection (2) of this section must be deposited into the account. Nothing in this section is a pledge of funds deposited to the account for repayment of tax exempt financing related to the King Street railroad station. The department may invest funds from the account as permitted by law and may enter into contracts with financial advisors as deemed necessary for that purpose. Only the secretary or the secretary's designee may authorize expenditures from the account.

(2) All funds appropriated to the King Street railroad station facility account by the legislature; all contributions, payments, grants, gifts, and donations to the account from other public or private entities; all receipts from departmental transactions involving capital facility sales, transfers, property leases and rents, incomes, and parking fees associated with the King Street railroad station; as well as all investment income associated with the account must be deposited into the King Street railroad station facility account for purposes specified in subsection (3) of this section.

(3) All funds deposited into the King Street railroad station facility account must be expended by the department solely to pay the following expenses:

- (a) Costs for management of the account;
- (b) Purchase and acquisition costs for King Street railroad station properties;
- (c) Payments, including incidental expenses, relating to the King Street railroad station depot as required by a lease or contract under section 4 of this act;

(d) Maintenance and operating costs for the King Street railroad station properties; and

(e) Capital improvement projects initiated by the department associated with, and for the benefit of, the King Street railroad station depot occurring after the date of the department's beneficial occupancy of the renovated King Street railroad station depot, and for capital improvement projects initiated at any time by the department for the benefit of King Street railroad station properties other than the depot including, but not limited to, improvements to associated platforms, parking areas, temporary buildings, maintenance facilities, pedestrian access, and other improvements essential to the operation of the station as a multimodal terminal.

(4) Nothing in this section is intended to restrict the right of the department from otherwise funding purchase, acquisition, capital improvement, maintenance, rental, operational, and other incidental costs relating to the King Street railroad station from appropriations and resources that are not designated for deposit in the King Street railroad station facility account.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act are each added to chapter 47.79 RCW.

NEW SECTION. Sec. 7. Due to the irrevocable expiration of federal and Amtrak funds critical to the redevelopment of the King Street railroad station on or before June 30, 2001, sections 1 through 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 immediately.

Passed the Senate March 10, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 63

[Engrossed Substitute Senate Bill 5238]

WATER-SEWER-COMMISSIONERS

AN ACT Relating to the board of commissioners of a water-sewer district; amending RCW 57.12.010, 57.12.015, and 57.12.039; adding a new section to chapter 57.12 RCW; and repealing RCW 57.08.110.

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

Sec. 1. RCW 57.12.010 and 1998 c 121 s 5 are each amended to read as follows:

The governing body of a district shall be a board of commissioners consisting of three members, or five ~~or seven~~ members as provided in RCW 57.12.015(~~or more, as provided in the event of merger or consolidation~~). The board shall annually elect one of its members as president and another as secretary.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of seventy dollars for each day or portion thereof devoted to the business of the district. However the compensation for each commissioner shall not exceed six thousand seven hundred twenty dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during the commissioner's term of office, by a written waiver filed with the district at any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of month for which it is made.

No commissioner shall be employed full time by the district. A commissioner shall be reimbursed for reasonable expenses actually incurred in connection with district business, including subsistence and lodging while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle at the mileage rate authorized in RCW 43.03.060.

Sec. 2. RCW 57.12.015 and 1996 c 230 s 402 are each amended to read as follows:

(1) In the event a three-member board of commissioners of any district with any number of customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board of a district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (name and/or number of district) be increased from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the district shall be increased to five members.

(2) In any district with more than ten thousand customers, if a three-member board of commissioners determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased without an election, unless within ninety days of adoption of that resolution a petition requesting an election

and signed by at least ten percent of the registered voters who voted in the last municipal general election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section.

(3)(a) In any district with more than twenty-five thousand customers, if a five-member board of commissioners determines by resolution that it would be in the best interest of the district to increase the number of commissioners from five to seven, the number of commissioners may be so increased without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last municipal general election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section.

(b) In the event a five-member board of commissioners of any district with more than twenty-five thousand customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from five to seven, the board may submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of _____ (name and/or number of district) be increased from five to seven members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the district shall be increased to seven members,

(4) The two additional positions created on boards of commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next district general election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second district general election after the appointment, at which two commissioners shall be elected for six-year terms.

NEW SECTION. Sec. 3. A new section is added to chapter 57.12 RCW to read as follows:

(1) Except as provided in RCW 52.14.020, in the event a five-member or seven-member board of commissioners of any district determines by resolution that it would be in the best interest of the district to decrease the number of commissioners from five to three, or from seven to five, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such a decrease in the number of commissioners of the district, the board shall submit a resolution to the county auditor. Upon receipt of the resolution, the county

auditor shall call a special election to be held within the district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of (name and/or number of district) be decreased from (five/seven) members to (three/five) members?

Yes . . .

No . . .

If the district has commissioner districts, the commissioners of the district must pass a resolution, before the submission of the proposition to the voters, to either redistrict from five commissioner districts to three commissioner districts, or from seven commissioner districts to five commissioner districts, or eliminate the commissioner districts. The resolution takes effect upon approval of the proposition by the voters.

If the proposition receives a majority approval at the election, the board of commissioners of the district shall be decreased to three or five members.

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

(3) At the next three district general elections after the reduction is approved, the number of commissioners for the district that are elected shall be as follows, notwithstanding the number of commissioners whose terms expire:

(a) In the first election after the reduction, only one position shall be filled.

(b) In the second election, one position shall be filled.

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

Sec. 4. RCW 57.12.039 and 1996 c 230 s 404 are each amended to read as follows:

(1) Notwithstanding RCW 57.12.020 and 57.12.030, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises this option, it shall divide the district into three, ~~((or))~~ five, or seven if the number of commissioners has been increased under RCW 57.12.015, commissioner districts of approximately equal population following current precinct and district boundaries.

(2) Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (b) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire district may vote

at a general election to elect a person as a commissioner of the commissioner district. Commissioner districts shall be redrawn as provided in chapter 29.70 RCW.

(3) In districts in which commissioners are nominated from commissioner districts, at the inception of a five-member or a seven-member board of commissioners, the new commissioner districts shall be numbered one through five or one through seven and the ~~((three))~~ incumbent commissioners shall represent up to five commissioner districts ~~((one through three))~~ depending on the amount of commissioners. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three or five numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from the remaining districts ~~((four and five))~~ where necessary and commissioners shall be elected at large at the general election. The persons elected as commissioners from the remaining commissioner districts ~~((four and five))~~ shall take office immediately after qualification as defined under RCW 29.01.135.

NEW SECTION. Sec. 5. RCW 57.08.110 (Association of commissioners—Purposes—Powers—Expenses) and 1999 c 153 s 13, 1996 c 230 s 318, 1995 c 301 s 76, 1973 1st ex.s. c 195 s 68, 1970 ex.s. c 47 s 5, & 1961 c 242 s 1 are each repealed.

Passed the Senate March 9, 2001.
Passed the House April 5, 2001.
Approved by the Governor April 18, 2001.
Filed in Office of Secretary of State April 18, 2001.

CHAPTER 64

[Senate Bill 5305]

TECHNICAL CORRECTIONS

AN ACT Relating to correction of outdated references and double amendments in the Revised Code of Washington; amending RCW 29.24.035, 34.05.660, 42.17.316, 46.16.065, 46.16.374, 46.61.524, 46.70.029, 46.70.180, 46.79.010, 46.79.020, 46.79.110, 46.80.030, 47.46.040, and 82.80.020; and reenacting RCW 46.20.285.

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

Sec. 1. RCW 29.24.035 and 1989 c 215 s 5 are each amended to read as follows:

A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW ~~((29.24.030(3)))~~ 29.24.040(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign

more than one nominating petition under this chapter for an office for a primary or election.

EXPLANATORY NOTE

The reference to RCW 29.24.030(3) appears to be erroneous. The section governing the certificate of nomination is RCW 29.24.040(3).

Sec. 2. RCW 34.05.660 and 1988 c 288 s 606 are each amended to read as follows:

It is the express policy of the legislature that establishment of procedures for review of administrative rules by the legislature and the notice of objection required by RCW 34.05.630(~~(2)~~) (3) and 34.05.640(2) in no way serves to establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceedings interpreting such rules.

EXPLANATORY NOTE

RCW 34.05.630 was amended by 1987 c 451 s 2, changing subsection (2) to subsection (3).

Sec. 3. RCW 42.17.316 and 1994 sp.s. c 9 s 726 are each amended to read as follows:

The disclosure requirements of this chapter shall not apply to records of the (~~committee~~) entity obtained in an action under RCW 18.71.300 through 18.71.340.

EXPLANATORY NOTE

RCW 18.71.300 was amended by 1998 c 132 s 3, changing the definition of "committee" to "entity."

Sec. 4. RCW 46.16.065 and 1975 1st ex.s. c 118 s 4 are each amended to read as follows:

In lieu of the fees provided in RCW (~~46.16.060~~) 46.16.0621, private passenger car one or two-wheel trailers of two thousand pounds gross weight or less, may be licensed upon the payment of a license fee in the sum of four dollars and fifty cents or, if the vehicle was previously licensed in this state and has not been registered in another jurisdiction in the intervening period, a renewal license fee in the sum of three dollars and twenty-five cents, but only if such trailers are to be operated upon the public highway by the owners thereof. It is the intention of the legislature that this reduced license shall be issued only as to trailers operated for personal use of the owners and not trailers held for rental to the public.

EXPLANATORY NOTE

RCW 46.16.060 was repealed by 2000 1st sp.s. c 1 s 2. For later enactment, see RCW 46.16.0621.

Sec. 5. RCW 46.16.374 and 1996 c 139 s 1 are each amended to read as follows:

(1) If the eligible applicant bears the entire cost of plate production, the department shall provide for the issuance of special license plates, in lieu of regular motor vehicle license plates, for passenger vehicles having manufacturers' rated carrying capacities of one ton or less that are owned or leased by an officer of the Taipei Economic and Cultural Office. The department shall issue the special license plates in a distinguishing color, running in a separate numerical series, and bearing the words "Foreign Organization." A vehicle for which special license plates are issued under this section is exempt from regular license fees under RCW ((46.16.060, excise tax under RCW 82.44.020;)) 46.16.0621 and any additional vehicle license fees imposed under RCW 82.80.020.

(2) Whenever the owner or lessee as provided in subsection (1) of this section transfers or assigns the interest or title in the motor vehicle for which the special plates were issued, the plates must be removed from the motor vehicle, and if another qualified vehicle is acquired, attached to that vehicle, and the director must be immediately notified of the transfer of the plates; otherwise the removed plates must be immediately forwarded to the director to be destroyed. Whenever the owner or lessee as provided in subsection (1) of this section is for any reason relieved of his or her duties as a representative of a recognized foreign organization, he or she shall immediately forward the special plates to the director, who shall upon receipt dispose of the plates as otherwise provided by law.

EXPLANATORY NOTE

RCW 46.16.060 and 82.44.020 were repealed by 2000 1st sp.s. c 1 s 2.
For later enactment of RCW 46.16.060, see RCW 46.16.0621.

Sec. 6. RCW 46.20.285 and 1998 c 207 s 4 and 1998 c 41 s 3 are each reenacted to read as follows:

The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, for the period prescribed in RCW 46.61.5055;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

EXPLANATORY NOTE

RCW 46.20.285 was amended twice during the 1998 legislative session, each without reference to the other. This reenactment merges the two versions to carry out the policy of the later, more inclusive amendment.

Sec. 7. RCW 46.61.524 and 2000 c 28 s 40 are each amended to read as follows:

(1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b) shall, as a condition of community (~~supervision~~) custody imposed under RCW 9.94A.383 or community placement imposed under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 348, Laws of 1991 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

(2) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified.

EXPLANATORY NOTE

RCW 9.94A.383 was amended by 1999 c 196 s 10, changing the term "community supervision" to "community custody."

Sec. 8. RCW 46.70.029 and 1990 c 250 s 63 are each amended to read as follows:

Listing dealers shall transact dealer business by obtaining a listing agreement for sale, and the buyer's purchase of the mobile home shall be handled as dealer inventory. All funds from the purchaser shall be placed in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the mobile home from these funds. Where title has been delivered to the purchaser, the listing dealer shall pay the amount due a seller within ten days after the sale of a listed mobile home. A complete account of all funds received and disbursed shall be given to the seller or consignor after the sale is completed. The sale of listed mobile homes imposes the same duty under RCW (~~46.12.120~~) 46.70.122 on the listing dealer as any other sale.

EXPLANATORY NOTE

RCW 46.12.120 was recodified as RCW 46.70.122 pursuant to 1993 c 307 s 18.

Sec. 9. RCW 46.70.180 and 1999 c 398 s 10 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his or her authorized representative's future acceptance, and the dealer fails or refuses within three calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, either (i) to deliver to the buyer the dealer's signed acceptance, or (ii) to void the order, offer, or contract document and tender the return of any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser, for vehicles previously registered to a business

or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account

controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contract, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, or title; or

(c) Signing any other documentation relating to the purchase, sale, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable. The department of licensing shall by December 31, 1996, in rule, adopt standard disclosure language for buyer's agent agreements under RCW 46.70.011, 46.70.070, and this section.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter ~~((62A.9))~~ 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

EXPLANATORY NOTE

Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 s 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.

Sec. 10. RCW 46.79.010 and 1990 c 250 s 69 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context indicates otherwise.

(1) "Junk vehicle" means a motor vehicle certified under RCW 46.55.230 as meeting all the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Is without a valid, current registration plate;

(e) Has a fair market value equal only to the value of the scrap in it.

(2) "Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a shredder for recycling salvage.

(3) "Demolish" means to destroy completely by use of a hydraulic baler and shears, or a shredder.

(4) "Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed ~~((motor))~~ vehicle wrecker or scrap processor in substantially the same form in which they are obtained. A hulk hauler may not sell second-hand motor vehicle parts to anyone other than a licensed vehicle wrecker or scrap processor, except for those parts specifically enumerated in RCW 46.79.020(2), as now or hereafter amended, which may be sold to a licensed ~~((motor))~~ vehicle wrecker or disposed of at a public facility for waste disposal.

(5) "Director" means the director of licensing.

(6) "Major component parts" include engines and short blocks, frames, transmissions or transfer cases, cabs, doors, front or rear differentials, front or rear clips, quarter panels or fenders, bumpers, truck beds or boxes, seats, and hoods.

EXPLANATORY NOTE

"Motor vehicle wrecker" was redesignated as "vehicle wrecker" by 1995 c 256.

Sec. 11. RCW 46.79.020 and 1990 c 250 s 70 are each amended to read as follows:

Any hulk hauler or scrap processor licensed under the provisions of this chapter may:

(1) Notwithstanding any other provision of law, transport any flattened or junk vehicle whether such vehicle is from in state or out of state, to a scrap processor upon obtaining the certificate of title or release of interest from the owner or an affidavit of sale from the landowner who has complied with RCW 46.55.230. The scrap processor shall forward such document(s) to the department, together with a monthly report of all vehicles acquired from other than a licensed automobile wrecker, and no further identification shall be necessary.

(2) Prepare vehicles and vehicle salvage for transportation and delivery to a scrap processor or vehicle wrecker only by removing the following vehicle parts:

- (a) Gas tanks;
- (b) Vehicle seats containing springs;
- (c) Tires;
- (d) Wheels;
- (e) Scrap batteries;
- (f) Scrap radiators.

Such parts may not be removed if they will be accepted by a scrap processor or wrecker. Such parts may be removed only at a properly zoned location, and all preparation activity, vehicles, and vehicle parts shall be obscured from public view. Storage is limited to two vehicles or the parts thereof which are authorized by this subsection, and any such storage may take place only at a properly zoned location. Any vehicle parts removed under the authority of this subsection shall be lawfully disposed of at or through a public facility or service for waste disposal or by sale to a licensed ((motor)) vehicle wrecker.

EXPLANATORY NOTE

"Motor vehicle wrecker" was redesignated as "vehicle wrecker" by 1995 c 256.

Sec. 12. RCW 46.79.110 and 1983 c 142 s 7 are each amended to read as follows:

Nothing contained in this chapter shall be construed to prohibit any individual not engaged in business as a hulk hauler or scrap processor from towing any vehicle owned by him or her to any ((motor)) vehicle wrecker or scrap processor.

EXPLANATORY NOTE

"Motor vehicle wrecker" was redesignated as "vehicle wrecker" by 1995 c 256.

Sec. 13. RCW 46.80.030 and 1990 c 250 s 72 are each amended to read as follows:

Application for a ((motor)) vehicle wrecker's license or renewal of a vehicle wrecker's license shall be made on a form for this purpose, furnished by the

department of licensing, and shall be signed by the ((motor)) vehicle wrecker or his authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association, or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town having a population of over five thousand persons and in all other instances a member of the Washington state patrol certifying that:

(a) The applicant has an established place of business at the address shown on the application, and;

(b) In the case of a renewal of a vehicle wrecker's license, the applicant is in compliance with this chapter and the provisions of Title 46 RCW, relating to registration and certificates of title: PROVIDED, That the above certifications in any instance can be made by an authorized representative of the department of licensing;

(4) Any other information that the department may require.

EXPLANATORY NOTE

"Motor vehicle wrecker" was redesignated as "vehicle wrecker" by 1995 c 256.

Sec. 14. RCW 47.46.040 and 1995 2nd sp.s. c 19 s 3 are each amended to read as follows:

(1) All projects designed, constructed, and operated under this authority must comply with all applicable rules and statutes in existence at the time the agreement is executed, including but not limited to the following provisions: Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

(2) The secretary or a designee shall consult with legal, financial, and other experts within and outside state government in the negotiation and development of the agreements.

(3) Agreements shall provide for private ownership of the projects during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement shall provide for state ownership of the transportation systems and facilities and lease to the private entity unless the state elects to provide for ownership of the facility by the private entity during the term of the agreement.

The state shall lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

(4) The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this chapter. Agreements for maintenance services entered into under this section shall provide for full reimbursement for services rendered by the

department or other state agencies. Agreements for police services for projects, involving state highway routes, developed under agreements shall be entered into with the Washington state patrol. The agreement for police services shall provide that the state patrol will be reimbursed for costs on a comparable basis with the costs incurred for comparable service on other state highway routes. The department may provide services for which it is reimbursed, including but not limited to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(5) The plans and specifications for each project constructed under this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity is deemed to be a part of the state highway system for purposes of identification, maintenance, and enforcement of traffic laws and for the purposes of applicable sections of this title. Upon reversion of the facility to the state, the project must meet all applicable state standards. Agreements shall address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable state standards upon reversion of the facility to the state.

(6) For the purpose of facilitating these projects and to assist the private entity in the financing, development, construction, and operation of the transportation systems and facilities, the agreements may include provisions for the department to exercise its authority, including the lease of facilities, rights of way, and airspace, exercise of the power of eminent domain, granting of development rights and opportunities, granting of necessary easements and rights of access, issuance of permits and other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, authority to negotiate acquisition of rights of way in excess of appraised value, and any other provision deemed necessary by the secretary.

(7) The agreements entered into under this section may include provisions authorizing the state to grant necessary easements and lease to a private entity existing rights of way or rights of way subsequently acquired with public or private financing. The agreements may also include provisions to lease to the entity airspace above or below the right of way associated or to be associated with the private entity's transportation facility. In consideration for the reversion rights in these privately constructed facilities, the department may negotiate a charge for the lease of airspace rights during the term of the agreement for a period not to exceed fifty years. If, after the expiration of this period, the department continues to lease these airspace rights to the private entity, it shall do so only at fair market value. The agreement may also provide the private entity the right of first refusal to undertake projects utilizing airspace owned by the state in the vicinity of the public-private project.

(8) Agreements under this section may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to

study, plan, design, finance, acquire, build, install, operate, enforce laws, and maintain toll highways, bridges, and tunnels and which will not unreasonably inhibit or prohibit the development of additional public transportation systems and facilities. Agreements under this section must secure and maintain liability insurance coverage in amounts appropriate to protect the project's viability and may address state indemnification of the private entity for design and construction liability where the state has approved relevant design and construction plans.

(9) Agreements shall include a process that provides for public involvement in decision making with respect to the development of the projects.

(10)(a) In carrying out the public involvement process required in subsection (9) of this section, the private entity shall proactively seek public participation through a process appropriate to the characteristics of the project that assesses and demonstrates public support among: Users of the project, residents of communities in the vicinity of the project, and residents of communities impacted by the project.

(b) The private entity shall conduct a comprehensive public involvement process that provides, periodically throughout the development and implementation of the project, users and residents of communities in the affected project area an opportunity to comment upon key issues regarding the project including, but not limited to: (i) Alternative sizes and scopes; (ii) design; (iii) environmental assessment; (iv) right of way and access plans; (v) traffic impacts; (vi) tolling or user fee strategies and tolling or user fee ranges; (vii) project cost; (viii) construction impacts; (ix) facility operation; and (x) any other salient characteristics.

(c) If the affected project area has not been defined, the private entity shall define the affected project area by conducting, at a minimum: (i) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (ii) an analysis of the anticipated traffic diversion patterns; (iii) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (iv) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (v) an analysis of the relationship of the project to state transportation needs and benefits.

The agreement may require an advisory vote by users of and residents in the affected project area.

(d) In seeking public participation, the private entity shall establish a local involvement committee or committees comprised of residents of the affected project area, individuals who represent cities and counties in the affected project area, organizations formed to support or oppose the project, if such organizations exist, and users of the project. The private entity shall, at a minimum, establish a committee as required under the specifications of RCW 47.46.030(~~(5)~~) (6)(b) (ii)

and (iii) and appointments to such committee shall be made no later than thirty days after the project area is defined.

(e) Local involvement committees shall act in an advisory capacity to the department and the private entity on all issues related to the development and implementation of the public involvement process established under this section.

(f) The department and the private entity shall provide the legislative transportation committee and local involvement committees with progress reports on the status of the public involvement process including the results of an advisory vote, if any occurs.

(11) Nothing in this chapter limits the right of the secretary and his or her agents to render such advice and to make such recommendations as they deem to be in the best interests of the state and the public.

EXPLANATORY NOTE

RCW 47.46.030 was amended by 1996 c 280 s 1, changing subsection (5)(b)(ii) and (iii) to subsection (6)(b)(ii) and (iii).

Sec. 15. RCW 82.80.020 and 2000 c 103 s 20 are each amended to read as follows:

(1) The legislative authority of a county, or subject to subsection (7) of this section, a qualifying city or town located in a county that has not imposed a fifteen-dollar fee under this section, may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW (~~46.16.060~~) 46.16.062 and for each vehicle that is subject to RCW 46.16.070 with an unladen weight of six thousand pounds or less, and that is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department 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 it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county or qualifying city or town imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county or qualifying city or town may develop and initiate an exemption process of the fifteen dollar fee for the registered owners of vehicles residing within the boundaries of the county or qualifying city or town: (a) Who are sixty-one years old or older at the time payment of the fee is due and whose household income for the previous calendar year is less than an amount prescribed by the county or qualifying city or town legislative authority; or (b) who have a physical disability.

(6) The legislative authority of a county or qualifying city or town shall develop and initiate an exemption process of the fifteen-dollar fee for vehicles registered within the boundaries of the county that are licensed under RCW 46.16.374.

(7) For purposes of this section, a "qualifying city or town" means a city or town residing within a county having a population of greater than seventy-five thousand in which is located all or part of a national monument. A qualifying city or town may impose the fee authorized in subsection (1) of this section subject to the following conditions and limitations:

(a) The city or town may impose the fee only if authorized to do so by a majority of voters voting at a general or special election on a proposition for that purpose. At a minimum, the ballot measure shall contain: (i) A description of the transportation project proposed for funding, properly identified by mileposts or other designations that specify the project parameters; (ii) the proposed number of months or years necessary to fund the city or town's share of the project cost; and (iii) the amount of fee to be imposed for the project.

(b) The city or town may not impose a fee that, if combined with the county fee, exceeds fifteen dollars. If a county imposes or increases a fee under this section that, if combined with the fee imposed by a city or town, exceeds fifteen dollars, the city or town fee shall be reduced or eliminated as needed so that in no city or town does the combined fee exceed fifteen dollars. All revenues from county-imposed fees shall be distributed as called for in RCW 82.80.080.

(c) Any fee imposed by a city or town under this section shall expire at the end of the term of months or years provided in the ballot measure, or when the city or town's bonded indebtedness on the project is retired, whichever is sooner.

(8) The fee imposed under subsection (7) of this section shall apply only to renewals and shall not apply to ownership transfer transactions.

EXPLANATORY NOTE

RCW 46.16.060 was repealed by 2000 1st sp.s. c 1 s 2. For later enactment, see RCW 46.16.0621.

Passed the Senate March 9, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 65

[Senate Bill 5348]

UNIFORM CHILD CUSTODY AND JURISDICTION ACT

AN ACT Relating to the uniform child custody jurisdiction and enforcement act; adding new sections to chapter 26.27 RCW; and repealing RCW 26.27.010, 26.27.020, 26.27.030, 26.27.040, 26.27.050, 26.27.060, 26.27.070, 26.27.080, 26.27.090, 26.27.100, 26.27.110, 26.27.120, 26.27.130, 26.27.140, 26.27.150, 26.27.160, 26.27.170, 26.27.180, 26.27.190, 26.27.200, 26.27.210, 26.27.220, 26.27.230, 26.27.900, 26.27.910, 26.27.920, and 26.27.930.

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

**ARTICLE 1
GENERAL PROVISIONS**

NEW SECTION. Sec. 101. SHORT TITLE. This chapter may be cited as the uniform child custody jurisdiction and enforcement act.

NEW SECTION. Sec. 102. DEFINITIONS. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained eighteen years of age.

(3) "Child custody determination" means a judgment, decree, parenting plan, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, a parenting plan, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, emancipation proceedings under chapter 13.64 RCW, proceedings under chapter 13.32A RCW, or enforcement under Article 3.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a child, parent, or person acting as a parent is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

NEW SECTION. Sec. 103. PROCEEDINGS GOVERNED BY OTHER LAW. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

NEW SECTION. Sec. 104. APPLICATION TO INDIAN TRIBES. (1) A child custody proceeding that pertains to an Indian child as defined in the federal Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., is not subject to this chapter to the extent that it is governed by the federal Indian child welfare act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying Articles 1 and 2.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Article 3.

NEW SECTION. Sec. 105. INTERNATIONAL APPLICATION OF CHAPTER. (1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Articles 1 and 2.

(2) Except as otherwise provided in subsection (3) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Article 3.

(3) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

NEW SECTION. Sec. 106. EFFECT OF CHILD CUSTODY DETERMINATION. A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in

accordance with the laws of this state or notified in accordance with section 108 of this act or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

NEW SECTION. Sec. 107. PRIORITY. If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon proper motion, must be given priority on the calendar and handled expeditiously.

NEW SECTION. Sec. 108. NOTICE TO PERSONS OUTSIDE STATE. (1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed for service of process by the law of the state in which the service is made or given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

(a) Personal delivery outside this state in the manner prescribed for service of process within this state;

(b) By any form of mail addressed to the person to be served and requesting a receipt; or

(c) As directed by the court, including publication if other means of notification are ineffective.

(2) Proof of service outside this state may be made:

(a) By affidavit of the individual who made the service;

(b) In the manner prescribed by the law of this state or the law of the state in which the service is made; or

(c) As directed by the order under which the service is made.

If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

NEW SECTION. Sec. 109. APPEARANCE AND LIMITED IMMUNITY. (1) Except as provided in subsection (2) of this section, a party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(2) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(3) The immunity granted by subsection (1) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

NEW SECTION. Sec. 110. COMMUNICATION BETWEEN COURTS.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

NEW SECTION. Sec. 111. TAKING TESTIMONY IN ANOTHER STATE.

(1) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

NEW SECTION. Sec. 112. COOPERATION BETWEEN COURTS—PRESERVATION OF RECORDS. (1) A court of this state may request the appropriate court of another state to:

(a) Hold an evidentiary bearing;

(b) Order a person to produce or give evidence pursuant to procedures of that state;

(c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(e) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1) of this section.

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

ARTICLE 2 JURISDICTION

NEW SECTION. Sec. 201. INITIAL CHILD CUSTODY JURISDICTION.

(1) Except as otherwise provided in section 204 of this act, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 207 or 208 of this act, and:

(i) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) All courts having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 207 or 208 of this act; or

(d) No court of any other state would have jurisdiction under the criteria specified in (a), (b), or (c) of this subsection.

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

NEW SECTION. Sec. 202. EXCLUSIVE, CONTINUING JURISDICTION.

(1) Except as otherwise provided in section 204 of this act, a court of this state that has made a child custody determination consistent with section 201 or 203 of this act has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 201 of this act.

NEW SECTION. Sec. 203. JURISDICTION TO MODIFY DETERMINATION. Except as otherwise provided in section 204 of this act, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 201(1) (a) or (b) of this act and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 202 of this act or that a court of this state would be a more convenient forum under section 207 of this act; or

(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

NEW SECTION. Sec. 204. TEMPORARY EMERGENCY JURISDICTION. (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 201 through 203 of this act, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 201 through 203 of this act. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 201 through 203 of this act, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced

in a court of a state having jurisdiction under sections 201 through 203 of this act, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 201 through 203 of this act. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 201 through 203 of this act, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to sections 201 through 203 of this act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

NEW SECTION. Sec. 205. NOTICE—OPPORTUNITY TO BE HEARD—JOINDER. (1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 108 of this act must be given to: (a) All persons entitled to notice under the law of this state as in child custody proceedings between residents of this state; (b) any parent whose parental rights have not been previously terminated; and (c) any person having physical custody of the child.

(2) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

NEW SECTION. Sec. 206. SIMULTANEOUS PROCEEDINGS. (1) Except as otherwise provided in section 204 of this act, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 207 of this act.

(2) Except as otherwise provided in section 204 of this act, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 209 of this act. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and

communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(b) Enjoin the parties from continuing with the proceeding for enforcement;

or

(c) Proceed with the modification under conditions it considers appropriate.

NEW SECTION. Sec. 207. INCONVENIENT FORUM. (1) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) The length of time the child has resided outside this state;

(c) The distance between the court in this state and the court in the state that would assume jurisdiction;

(d) The relative financial circumstances of the parties;

(e) Any agreement of the parties as to which state should assume jurisdiction;

(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state with the facts and issues in the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for dissolution or another proceeding while still retaining jurisdiction over the dissolution or other proceeding.

NEW SECTION. Sec. 208. JURISDICTION DECLINED BY REASON OF CONDUCT. (1) Except as otherwise provided in section 204 of this act or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) A court of the state otherwise having jurisdiction under sections 201 through 203 of this act determines that this state is a more appropriate forum under section 207 of this act; or

(c) No court of any other state would have jurisdiction under the criteria specified in sections 201 through 203 of this act.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 201 through 203 of this act.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

NEW SECTION. Sec. 209. INFORMATION TO BE SUBMITTED TO COURT. (1) Subject to laws providing for the confidentiality of procedures, addresses, and other identifying information, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic

violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(2) If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in subsection (1)(a) through (c) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

NEW SECTION. Sec. 210. APPEARANCE OF PARTIES AND CHILD.

(1) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 108 of this act include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

**ARTICLE 3
ENFORCEMENT**

NEW SECTION. Sec. 301. DEFINITIONS. The definitions in this section apply throughout this article, unless the context clearly requires otherwise.

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

NEW SECTION. Sec. 302. ENFORCEMENT UNDER HAGUE CONVENTION. Under this article a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

NEW SECTION. Sec. 303. DUTY TO ENFORCE. (1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(2) A court of this state may use any remedy available under other law of this state including writs of habeas corpus under chapter 7.36 RCW and enforcement proceedings under Title 26 RCW to enforce a child custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

NEW SECTION. Sec. 304. TEMPORARY VISITATION. (1) A court of this state that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a) A visitation schedule made by a court of another state; or

(b) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(2) If a court of this state makes an order under subsection (1)(b) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2. The order remains in effect until an order is obtained from the other court or the period expires.

NEW SECTION. Sec. 305. REGISTRATION OF CHILD CUSTODY DETERMINATION. (1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(a) A letter or other document requesting registration;
(b) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration, the determination has not been modified; and

(c) Except as otherwise provided in section 209 of this act, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1) of this section, the registering court shall:

(a) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) Serve notice upon the persons named pursuant to subsection (1)(c) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by subsection (2)(b) of this section must state that:

(a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) A hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and

(c) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered determination must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered determination unless the person contesting registration establishes that:

(a) The issuing court did not have jurisdiction under Article 2;

(b) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2; or

(c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 108 of this act, in the proceedings before the court that issued the determination for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(6) Confirmation of a registered determination, whether by operation of law or after notice and hearing, precludes further contest of the determination with respect to any matter that could have been asserted at the time of registration.

NEW SECTION. Sec. 306. ENFORCEMENT OF REGISTERED DETERMINATION. (1) A court of this state may grant any relief normally

available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2, a registered child custody determination of a court of another state.

NEW SECTION. Sec. 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

NEW SECTION. Sec. 308. EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION. (1) A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination must state:

(a) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

(c) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(d) The present physical address of the child and the respondent, if known;

(e) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) If the child custody determination has been registered and confirmed under section 305 of this act, the date and place of registration.

(3) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(4) An order issued under subsection (3) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the

payment of fees, costs, and expenses under section 312 of this act, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) The child custody determination has not been registered and confirmed under section 305 of this act and that:

(i) The issuing court did not have jurisdiction under Article 2;

(ii) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2;

(iii) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 of this act, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under section 304 of this act, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2.

NEW SECTION. Sec. 309. SERVICE OF PETITION AND ORDER.

Except as otherwise provided in section 311 of this act, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

NEW SECTION. Sec. 310. HEARING AND ORDER. (1) Unless the court issues a temporary emergency order pursuant to section 204 of this act, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a) The child custody determination has not been registered and confirmed under section 305 of this act and that:

(i) The issuing court did not have jurisdiction under Article 2;

(ii) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2; or

(iii) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 108 of this act, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under section 305 of this act but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2.

(2) The court shall award the fees, costs, and expenses authorized under section 312 of this act and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

NEW SECTION. Sec. 311. AUTHORIZATION TO TAKE PHYSICAL CUSTODY OF CHILD. An order under this chapter directing law enforcement to obtain physical custody of the child from the other parent or a third party holding the child may only be sought pursuant to a writ of habeas corpus under chapter 7.36 RCW.

NEW SECTION. Sec. 312. COSTS, FEES, AND EXPENSES. (1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

NEW SECTION. Sec. 313. RECOGNITION AND ENFORCEMENT. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2.

NEW SECTION. Sec. 314. APPEALS. An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases relating to minor children. Unless the court enters a temporary emergency order under section 204 of this act, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

NEW SECTION. Sec. 315. ROLE OF PROSECUTOR OR ATTORNEY GENERAL. (1) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or attorney general may take any lawful action, including resorting to a proceeding under this article or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (a) An existing child custody determination;
- (b) A request to do so from a court in a pending child custody proceeding;
- (c) A reasonable belief that a criminal statute has been violated; or
- (d) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A prosecutor or attorney general acting under this section acts on behalf of the court and may not represent any party.

NEW SECTION. Sec. 316. ROLE OF LAW ENFORCEMENT. At the request of a prosecutor or attorney general acting under section 315 of this act, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or attorney general with responsibilities under section 315 of this act.

NEW SECTION. Sec. 317. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or attorney general and law enforcement officers under section 315 or 316 of this act.

ARTICLE 4 MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 401. APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Sec. 402. SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 403. The following acts or parts of acts are each repealed:

- (1) RCW 26.27.010 (Purposes of chapter—Construction of provisions) and 1979 c 98 s 1;
- (2) RCW 26.27.020 (Definitions) and 1979 c 98 s 2;
- (3) RCW 26.27.030 (Jurisdiction) and 1979 c 98 s 3;
- (4) RCW 26.27.040 (Notice and opportunity to be heard) and 1979 c 98 s 4;
- (5) RCW 26.27.050 (Notice to persons outside this state—Submission to jurisdiction) and 1979 c 98 s 5;
- (6) RCW 26.27.060 (Simultaneous proceedings in other states) and 1979 c 98 s 6;
- (7) RCW 26.27.070 (Inconvenient forum) and 1979 c 98 s 7;
- (8) RCW 26.27.080 (Jurisdiction declined by reason of conduct) and 1979 c 98 s 8;
- (9) RCW 26.27.090 (Information under oath to be submitted to court) and 1979 c 98 s 9;
- (10) RCW 26.27.100 (Additional parties) and 1979 c 98 s 10;
- (11) RCW 26.27.110 (Appearance of parties and child) and 1979 c 98 s 11;
- (12) RCW 26.27.120 (Binding force and res judicata effect of custody decree) and 1979 c 98 s 12;

- (13) RCW 26.27.130 (Recognition of out-of-state custody decrees) and 1979 c 98 s 13;
- (14) RCW 26.27.140 (Modification of custody decree of another state) and 1979 c 98 s 14;
- (15) RCW 26.27.150 (Filing and enforcement of custody decree of another state) and 1979 c 98 s 15;
- (16) RCW 26.27.160 (Registry of out-of-state custody decrees and proceedings) and 1984 c 128 s 7 & 1979 c 98 s 16;
- (17) RCW 26.27.170 (Certified copies of custody decree) and 1979 c 98 s 17;
- (18) RCW 26.27.180 (Taking testimony in another state) and 1979 c 98 s 18;
- (19) RCW 26.27.190 (Hearings and studies in another state—Orders to appear) and 1979 c 98 s 19;
- (20) RCW 26.27.200 (Assistance to courts of other states) and 1979 c 98 s 20;
- (21) RCW 26.27.210 (Preservation of records of custody proceedings—Forwarding to another state) and 1979 c 98 s 21;
- (22) RCW 26.27.220 (Request for court records of another state) and 1979 c 98 s 22;
- (23) RCW 26.27.230 (International application) and 1979 c 98 s 23;
- (24) RCW 26.27.900 (Construction with chapter 26.09 RCW) and 1979 c 98 s 24;
- (25) RCW 26.27.910 (Short title) and 1979 c 98 s 25;
- (26) RCW 26.27.920 (Severability—1979 c 98) and 1979 c 98 s 26; and
- (27) RCW 26.27.930 (Section captions) and 1979 c 98 s 27.

NEW SECTION. Sec. 404. TRANSITIONAL PROVISION. A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before the effective date of this section is governed by the law in effect at the time the motion or other request was made.

NEW SECTION. Sec. 405. CAPTIONS, ARTICLE DESIGNATIONS, AND ARTICLE HEADINGS NOT LAW. Captions, article designations, and article headings used in this chapter are not any part of the law.

NEW SECTION. Sec. 406. Sections 101 through 112, 201 through 210, 301 through 317, 401, 404, and 405 of this act are each added to chapter 26.27 RCW.

Passed the Senate March 12, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 66

[Senate Bill 5377]

MARKING VEHICLE WEIGHT—REPEALED

AN ACT Relating to marking the gross weight on certain vehicles; and repealing RCW 46.16.170.

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

NEW SECTION. Sec. 1. RCW 46.16.170 (Marking gross weight on vehicle) and 1988 c 56 s 2, 1986 c 18 s 14, & 1961 c 12 s 46.16.170 are each repealed.

Passed the Senate March 10, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 67

[Engrossed Substitute Senate Bill 5434]

DISABLED PARKING—IDENTIFICATION PERMITS

AN ACT Relating to special identification cards for persons issued disabled parking permits; and amending RCW 46.16.381.

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

Sec. 1. RCW 46.16.381 and 1999 c 136 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 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 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 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 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 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 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 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 12, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 68

[Substitute Senate Bill 5472]

COURT SERVICES—TERMINATION

AN ACT Relating to courts of limited jurisdiction; amending RCW 3.50.810, 3.46.150, 35.20.010, and 39.34.180; and repealing RCW 3.46.155.

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

Sec. 1. RCW 3.50.810 and 1993 c 317 s 2 are each amended to read as follows:

(1) Any city having entered into an agreement for court services with the county must provide written notice of the intent to terminate the agreement to the county legislative authority not less than one year prior to February 1st of the year in which all district court judges are subject to election.

(2) Any city that terminates ((a municipal court under this chapter may not establish another municipal court under this chapter until at least ten years have elapsed from the date of termination)) an agreement for court services to be provided by a district court may terminate the agreement only at the end of a four-year district court judicial term.

(3) A county that wishes to terminate an agreement with a city for the provision of court services must provide written notice of the intent to terminate the agreement to the city legislative authority not less than one year prior to the expiration of the agreement.

Sec. 2. RCW 3.46.150 and 1984 c 258 s 210 are each amended to read as follows:

(1) Any city, having established a municipal department as provided in this chapter may, by written notice to the county legislative authority not less than ((thirty days)) one year prior to February 1st of ((any)) the year in which all district court judges are subject to election, require the termination of the municipal department created pursuant to this chapter. A city may terminate a municipal department only at the end of a four-year judicial term. However, the city may not give the written notice required by this section unless the city has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(2) A county that wishes to terminate a municipal department of the district court must provide written notice to the city legislative authority at least one year prior to the date of the intended termination.

Sec. 3. RCW 35.20.010 and 1984 c 258 s 201 are each amended to read as follows:

(1) There is hereby created and established in each incorporated city of this state having a population of more than four hundred thousand inhabitants, as shown by the federal or state census, whichever is the later, a municipal court, which shall be styled "The Municipal Court of (name of city)," hereinafter designated and referred to as the municipal court, which court shall have jurisdiction and shall exercise all the powers by this chapter declared to be vested in such municipal court, together with such powers and jurisdiction as is generally conferred in this state either by common law or statute.

(2) A municipality operating a municipal court under this section may terminate that court if the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(3) A city that has entered into an agreement for court services with the county must provide written notice of the intent to terminate the agreement to the county legislative authority not less than one year prior to February 1st of the year in which all district court judges are subject to election. A city that terminates an agreement for court services to be provided by a district court may terminate the agreement only at the end of a four-year district court judicial term.

(4) A county that wishes to terminate an agreement with a city for the provision of court services must provide written notice of the intent to terminate the agreement to the city legislative authority not less than one year prior to the expiration of the agreement.

Sec. 4. RCW 39.34.180 and 1996 c 308 s 1 are each amended to read as follows:

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony

offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998.

NEW SECTION. Sec. 5. RCW 3.46.155 (Termination of municipal department—Waiting period for establishing another) and 1993 c 317 s 1 are each repealed.

Passed the Senate March 9, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 69

[Substitute Senate Bill 5925]

AGRICULTURAL INDUSTRIAL PROCESS WATER

AN ACT Relating to agricultural industrial process water; amending RCW 90.46.005, 90.46.010, 90.46.130, 90.14.140, 90.03.252, and 90.44.062; and adding a new section to chapter 90.46 RCW.

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

Sec. 1. RCW 90.46.005 and 1997 c 355 s 1 are each amended to read as follows:

The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its

environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the use of reclaimed water as soon as is practicable, the legislature encourages the cooperative efforts of the public and private sectors and the use of pilot projects to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW 90.46.110 are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is great, but there are scarce resources to develop the necessary facilities.

The legislature further finds that the agricultural processing industry can play a critical and beneficial role in promoting the efficient use of water by having the opportunity to develop and reuse agricultural industrial process water from food processing.

Sec. 2. RCW 90.46.010 and 1997 c 444 s 5 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Greywater" means wastewater having the consistency and strength of residential domestic type wastewater. Greywater includes wastewater from sinks, showers, and laundry fixtures, but does not include toilet or urinal waters.

(2) "Land application" means application of treated effluent for purposes of irrigation or landscape enhancement for residential, business, and governmental purposes.

(3) "Person" means any state, individual, public or private corporation, political subdivision, governmental subdivision, governmental agency, municipality, copartnership, association, firm, trust estate, or any other legal entity whatever.

(4) "Reclaimed water" means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for a beneficial use or a controlled use that would not otherwise occur and is no longer considered wastewater.

(5) "Sewage" means water-carried human wastes from residences, buildings, industrial and commercial establishments, or other places, together with such ground water infiltration, surface waters, or industrial wastewater as may be present.

(6) "User" means any person who uses reclaimed water.

(7) "Wastewater" means water and wastes discharged from homes, businesses, and industry to the sewer system.

(8) "Beneficial use" means the use of reclaimed water, that has been transported from the point of production to the point of use without an intervening discharge to the waters of the state, for a beneficial purpose.

(9) "Direct recharge" means the controlled subsurface addition of water directly to the ground water basin that results in the replenishment of ground water.

(10) "Ground water recharge criteria" means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to chapter 43.20 RCW and the department of health pursuant to chapter 70.119A RCW.

(11) "Planned ground water recharge project" means any reclaimed water project designed for the purpose of recharging ground water, via direct recharge or surface percolation.

(12) "Reclamation criteria" means the criteria set forth in the water reclamation and reuse interim standards and subsequent revisions adopted by the department of ecology and the department of health.

(13) "Streamflow augmentation" means the discharge of reclaimed water to rivers and streams of the state or other surface water bodies, but not wetlands.

(14) "Surface percolation" means the controlled application of water to the ground surface for the purpose of replenishing ground water.

(15) "Wetland or wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands regulated under this chapter shall be delineated in accordance with the manual adopted by the department of ecology pursuant to RCW 90.58.380.

(16) "Constructed beneficial use wetlands" means those wetlands intentionally constructed on nonwetland sites to produce or replace natural wetland functions and values. Constructed beneficial use wetlands are considered "waters of the state."

(17) "Constructed treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or storm water treatment. Constructed treatment wetlands are considered part of the collection and treatment system and are not considered "waters of the state."

(18) "Agricultural industrial process water" means water that has been used for the purpose of agriculture processing and has been adequately and reliably treated, so that as a result of that treatment, it is suitable for other agricultural water use.

(19) "Agricultural processing" means the processing of crops or milk to produce a product primarily for wholesale or retail sale for human or animal consumption, including but not limited to potato, fruit, vegetable, and grain processing.

(20) "Agricultural water use" means the use of water for irrigation and other uses related to the production of agricultural products. These uses include, but are not limited to, construction, operation, and maintenance of agricultural facilities and livestock operations at farms, ranches, dairies, and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, and fire control.

NEW SECTION. Sec. 3. A new section is added to chapter 90.46 RCW to read as follows:

The permit to apply agricultural industrial process water to agricultural water use shall be the permit issued under chapter 90.48 RCW to the owner of the agricultural processing plant who may then distribute the water through methods including, but not limited to, irrigation systems, subject to provisions in the permit

governing the location, rate, water quality, and purpose. In cases where the department of ecology determines that a significant risk to public health exists, in land application of the water, the department must refer the application to the department of health for review and consultation.

The owner of the agricultural processing plant who obtains a permit under this section has the exclusive right to the use of any agricultural industrial process water generated from the plant and to the distribution of such water through facilities including irrigation systems. Use and distribution of the water by the owner is exempt from the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and 90.44.100.

Nothing in this act shall be construed to affect any right to reuse agricultural industrial discharge water in existence on or before the effective date of this section.

Sec. 4. RCW 90.46.130 and 1997 c 444 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, facilities that reclaim water under this chapter shall not impair any existing water right downstream from any freshwater discharge points of such facilities unless compensation or mitigation for such impairment is agreed to by the holder of the affected water right.

(2) Agricultural water use of agricultural industrial process water under this chapter shall not impair existing water rights within the water source that is the source of supply for the agricultural processing plant and, if the water source is surface water, the existing water rights are downstream from the agricultural processing plant's discharge points existing on the effective date of this act.

Sec. 5. RCW 90.14.140 and 1998 c 258 s 1 are each amended to read as follows:

(1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (a) Drought, or other unavailability of water;
- (b) Active service in the armed forces of the United States during military crisis;
- (c) Nonvoluntary service in the armed forces of the United States;
- (d) The operation of legal proceedings;
- (e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;
- (f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW;

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later;

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW;

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030; ~~((or))~~

(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100; or

(g) If such a right or portion of the right is authorized for a purpose that is satisfied by the use of agricultural industrial process water as authorized under section 3 of this act.

Sec. 6. RCW 90.03.252 and 1997 c 444 s 2 are each amended to read as follows:

The permit requirements of RCW 90.03.250 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120 and do not apply to the use of agricultural industrial process water as provided under section 3 of this act.

Sec. 7. RCW 90.44.062 and 1997 c 444 s 3 are each amended to read as follows:

The permit requirements of RCW 90.44.060 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120 and do not apply to the use of agricultural industrial process water as provided under section 3 of this act.

Passed the Senate March 13, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 18, 2001.

Filed in Office of Secretary of State April 18, 2001.

CHAPTER 70

[House Bill 1002]

PUBLIC EMPLOYEES—PERSONAL INFORMATION

AN ACT Relating to the public inspection and copying of residential addresses or residential phone numbers of public employees or volunteers of public agencies; and reenacting and amending RCW 42.17.310.

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

Sec. 1. RCW 42.17.310 and 2000 c 134 s 3, 2000 c 56 s 1, and 2000 c 6 s 5 are each reenacted and amended to read as follows:

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

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

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

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 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, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(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~~) or residential telephone numbers of employees or volunteers of a public agency which are held by ~~(the)~~ any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing (lists) list of employees or volunteers of any public agency.

(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 18.130.040 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 or 70.41.200, or by a peer review committee under RCW 4.24.250, 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.

(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.

(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.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers supplied to an agency for the purpose of electronic transfer of funds, except when disclosure is expressly required by law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(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.

Passed the House March 12, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 71

[House Bill 1028]

PUBLIC EMPLOYEES—MILITARY LEAVE

AN ACT Relating to military leave for public employees; amending RCW 38.40.060; and providing an effective date.

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

Sec. 1. RCW 38.40.060 and 1991 c 25 s 1 are each amended to read as follows:

Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding fifteen days during each ~~((calendar))~~ year beginning October 1st and ending the following September 30th. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as he or she may be ordered to active duty or active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall receive

from the state, or the county, city, or other political subdivision, his or her normal pay.

NEW SECTION. Sec. 2. This act takes effect October 1, 2001.

Passed the House February 22, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 72

[House Bill 1067]

RAILROAD POLICE

AN ACT Relating to the commissioning and training of railroad police; and amending RCW 81.60.010, 81.60.020, 81.60.030, 81.60.040, 81.60.050, and 81.60.060.

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

Sec. 1. RCW 81.60.010 and 1961 c 14 s 81.60.010 are each amended to read as follows:

The ~~((governor))~~ criminal justice training commission shall have the power to and may in ~~((his))~~ its discretion appoint and commission ~~((special))~~ railroad police officers at the request of any railroad corporation and may revoke any ~~((such))~~ appointment at ~~((his))~~ its pleasure.

Sec. 2. RCW 81.60.020 and 1961 c 14 s 81.60.020 are each amended to read as follows:

Any railroad corporation desiring the appointment of any of its officers, agents, or servants not exceeding twenty-five in number for any one division of any railroad operating in this state ~~((division as herein intended, shall mean the part of any railroad or railroads under the jurisdiction of any one division superintendent;))~~ as ~~((special))~~ railroad police officers shall file a request with the ~~((governor))~~ criminal justice training commission on an approved application ~~((stating the name, age and place of residence of the person whose appointment it desires, the position he occupies with the railroad corporation, the nature of his duties and the reasons why his appointment is desired, which))~~ form. The application shall be signed by the president or some managing officer of the railroad corporation and shall be accompanied by an affidavit ~~((of such officer to the effect))~~ stating that ~~((he))~~ the officer is acquainted with the person whose appointment is sought, that ~~((he))~~ the officer believes ~~((him))~~ the person to be of good moral character, and that ~~((he))~~ the person is of such character and experience that he or she can be safely entrusted with the powers of a police officer.

For the purposes of this section, "division" means the part of any railroad or railroads under the jurisdiction of any one division superintendent.

Sec. 3. RCW 81.60.030 and 1961 c 14 s 81.60.030 are each amended to read as follows:

Before receiving ~~((his))~~ a commission each person appointed under the provisions of RCW 81.60.010 through 81.60.060 shall successfully complete a course of training prescribed or approved by the criminal justice training commission, and shall take, subscribe, and file with the ~~((governor))~~ commission an oath to support the Constitution of the United States~~(:)~~ and the Constitution and laws of the state of Washington, and to faithfully perform the duties of ~~((his))~~ the office. The corporation requesting appointment of a railroad police officer shall bear the full cost of training.

Railroad police officers appointed and commissioned under RCW 81.60.010 through 81.60.060 are subject to rules and regulations adopted by the commission.

Sec. 4. RCW 81.60.040 and 1961 c 14 s 81.60.040 are each amended to read as follows:

Every police officer appointed and commissioned under the provisions of RCW 81.60.010 through 81.60.060 shall when on duty have the power and authority conferred by law on peace officers, but shall exercise such power only in the protection of the property belonging to or under the control of the corporation at whose instance ~~((he))~~ the officer is appointed and in preventing, and making arrest for, violations of law upon or in connection with such property.

Sec. 5. RCW 81.60.050 and 1961 c 14 s 81.60.050 are each amended to read as follows:

Every ~~((such special))~~ railroad police officer shall, when on duty, wear in plain view a ~~((metal shield))~~ badge bearing the words "~~((special))~~ railroad police" and the name of the corporation by which ~~((he))~~ the officer is employed, or carry, and present upon request, official credentials identifying the railroad police officer and corporation.

Sec. 6. RCW 81.60.060 and 1961 c 14 s 81.60.060 are each amended to read as follows:

The corporation procuring the appointment of any ~~((special))~~ railroad police shall be solely responsible for the compensation for ~~((his))~~ the officer's services and shall be liable civilly for any unlawful act of ~~((such))~~ the officer resulting in damage to any person or corporation.

Passed the House March 27, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 73

[House Bill 1084]

INDEPENDENT SALARY COMMISSIONS—CITY OFFICIALS

AN ACT Relating to independent commissions to set salaries for city and town elected officials, and county commissioners and councilmembers; amending RCW 35.22.200 and 36.17.020; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.17 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature hereby finds and declares that:

(1) Article XXX, section 1 of the state Constitution permits midterm salary increases for municipal officers who do not fix their own compensation;

(2) The Washington citizens' commission on salaries for elected officials established pursuant to Article XXVIII, section 1 of the state Constitution with voter approval has assured that the compensation for state and county elected officials will be fair and certain, while minimizing the dangers of midterm salary increases being used to influence those officers in the performance of their duties;

(3) The same public benefits of independent salary commissions should be extended to the setting of compensation of municipal elected officers; and

(4) This act is intended to clarify the intent of the legislature that existing state law authorizes:

(a) The establishment of independent salary commissions to set the salaries of city or town elected officials, county commissioners, and county councilmembers; and

(b) The authority of the voters of such cities, towns, and counties to review commission decisions to increase or decrease such salaries by means of referendum.

Sec. 2. RCW 35.22.200 and 1965 ex.s. c 47 s 13 are each amended to read as follows:

The legislative powers of a charter city shall be vested in a mayor and a city council, to consist of such number of members and to have such powers as may be provided for in its charter. The charter may provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city. The mayor and council and such other elective officers as may be provided for in such charter shall be elected at such times and in such manner as provided in Title 29 RCW, and for such terms and shall perform such duties (~~and receive such compensation~~) as may be prescribed in the charter, and shall receive compensation in accordance with the process or standards of a charter provision or ordinance which conforms with section 4 of this act.

Sec. 3. RCW 36.17.020 and 1994 sp.s. c 4 s 1 are each amended to read as follows:

The county legislative authority of each county or a county commissioner or councilmember salary commission which conforms with section 5 of this act is authorized to establish the salaries of the elected officials of the county. One-half of the salary of each prosecuting attorney shall be paid by the state. The annual salary of a county elected official shall not be less than the following:

(1) In each county with a population of one million or more: Auditor, clerk, treasurer, sheriff, members of the county legislative authority, and coroner,

eighteen thousand dollars; assessor, nineteen thousand dollars; and prosecuting attorney, thirty thousand three hundred dollars;

(2) In each county with a population of from two hundred ten thousand to less than one million: Auditor, seventeen thousand six hundred dollars; clerk, seventeen thousand six hundred dollars; treasurer, seventeen thousand six hundred dollars; sheriff, nineteen thousand five hundred dollars; assessor, seventeen thousand six hundred dollars; prosecuting attorney, twenty-four thousand eight hundred dollars; members of the county legislative authority, nineteen thousand five hundred dollars; and coroner, seventeen thousand six hundred dollars;

(3) In each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand: Auditor, sixteen thousand dollars; clerk, sixteen thousand dollars; treasurer, sixteen thousand dollars; sheriff, seventeen thousand six hundred dollars; assessor, sixteen thousand dollars; prosecuting attorney, twenty-four thousand eight hundred dollars; members of the county legislative authority, seventeen thousand six hundred dollars; and coroner, sixteen thousand dollars;

(4) In each county with a population of from seventy thousand to less than one hundred twenty-five thousand: Auditor, fourteen thousand nine hundred dollars; clerk, fourteen thousand nine hundred dollars; treasurer, fourteen thousand nine hundred dollars; assessor, fourteen thousand nine hundred dollars; sheriff, fourteen thousand nine hundred dollars; prosecuting attorney, twenty-three thousand seven hundred dollars; members of the county legislative authority, fourteen thousand nine hundred dollars; and coroner, fourteen thousand nine hundred dollars;

(5) In each county with a population of from forty thousand to less than seventy thousand: Auditor, thirteen thousand eight hundred dollars; clerk, thirteen thousand eight hundred dollars; treasurer, thirteen thousand eight hundred dollars; assessor, thirteen thousand eight hundred dollars; sheriff, thirteen thousand eight hundred dollars; prosecuting attorney, twenty-three thousand seven hundred dollars; members of the county legislative authority, thirteen thousand eight hundred dollars; and coroner, thirteen thousand eight hundred dollars;

(6) In each county with a population of from eighteen thousand to less than forty thousand: Auditor, twelve thousand one hundred dollars; clerk, twelve thousand one hundred dollars; treasurer, twelve thousand one hundred dollars; sheriff, twelve thousand one hundred dollars; assessor, twelve thousand one hundred dollars; prosecuting attorney in such a county in which there is no state university or college, fourteen thousand three hundred dollars; in such a county in which there is a state university or college, sixteen thousand five hundred dollars; and members of the county legislative authority, eleven thousand dollars;

(7) In each county with a population of from twelve thousand to less than eighteen thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two hundred dollars;

prosecuting attorney, thirteen thousand two hundred dollars; and members of the county legislative authority, nine thousand four hundred dollars;

(8) In each county with a population of from eight thousand to less than twelve thousand: Auditor, ten thousand one hundred dollars; clerk, ten thousand one hundred dollars; treasurer, ten thousand one hundred dollars; assessor, ten thousand one hundred dollars; sheriff, eleven thousand two hundred dollars; prosecuting attorney, nine thousand nine hundred dollars; and members of the county legislative authority, seven thousand dollars;

(9) In each county with a population of from five thousand to less than eight thousand: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; assessor, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; prosecuting attorney, nine thousand nine hundred dollars; and members of the county legislative authority, six thousand five hundred dollars;

(10) In each other county: Auditor, nine thousand one hundred dollars; clerk, nine thousand one hundred dollars; treasurer, nine thousand one hundred dollars; sheriff, ten thousand five hundred dollars; assessor, nine thousand one hundred dollars; prosecuting attorney, nine thousand nine hundred dollars; and members of the county legislative authority, six thousand five hundred dollars.

NEW SECTION. Sec. 4. A new section is added to chapter 35.21 RCW to read as follows:

(1) Salaries for elected officials of towns and cities may be set by salary commissions established in accordance with city charter or by ordinance and in conformity with this section.

(2) The members of such commissions shall be appointed in accordance with the provisions of a city charter, or as specified in this subsection:

(a) Shall be appointed by the mayor with approval of the city council;

(b) May not be appointed to more than two terms;

(c) May only be removed during their terms of office for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence; and

(d) May not include any officer, official, or employee of the city or town or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

(3) Any change in salary shall be filed by the commission with the city clerk and shall become effective and incorporated into the city or town budget without further action of the city council or salary commission.

(4) Salary increases established by the commission shall be effective as to all city or town elected officials, regardless of their terms of office.

(5) Salary decreases established by the commission shall become effective as to incumbent city or town elected officials at the commencement of their next subsequent terms of office.

(6) Salary increases and decreases shall be subject to referendum petition by the people of the town or city in the same manner as a city ordinance upon filing of such petition with the city clerk within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

(7) Referendum measures under this section shall be submitted to the voters of the city or town at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall be otherwise governed by the provisions of the state Constitution, or city charter, or laws generally applicable to referendum measures.

(8) The action fixing the salary by a commission established in conformity with this section shall supersede any other provision of state statute or city or town ordinance related to municipal budgets or to the fixing of salaries.

(9) Salaries for mayors and councilmembers established under an ordinance or charter provision in existence on the effective date of this act that substantially complies with this section shall remain in effect unless and until changed in accordance with such charter provision or ordinance.

NEW SECTION. Sec. 5. A new section is added to chapter 36.17 RCW to read as follows:

(1) Salaries for county commissioners and councilmembers may be set by county commissioner and councilmember salary commissions established by ordinance or resolution of the county legislative authority and in conformity with this section.

(2) Commissions established under subsection (1) of this section shall be known as the **(Insert name of county)** county citizens' commission on salaries for elected officials. Each commission shall consist of ten members appointed by the county commissioner or executive with the approval of the county legislative authority, or by a majority vote of the county legislative authority if there is no single county commissioner or executive, as provided in this section.

(a) Six of the ten commission members shall be selected by lot by the county auditor from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under (c) of this subsection. In noncharter counties, the county auditor shall select two commission members living in each commissioner's district. The county auditor 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 commissioner's 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.

(b) The remaining four of the ten commission members must be residents of the county and shall be appointed by the county commissioner or executive with approval of the county legislative authority, or by a majority vote of the county legislative authority if there is no single county commissioner or executive. The persons selected under this subsection shall have had experience in the field of personnel management. Of these four members, one shall be selected from each of the following four sectors in the county: Business, professional personnel management, legal profession, and organized labor.

(c) If there is a single county commissioner or executive, the county auditor shall forward the names of persons selected under (a) of this subsection to the county commissioner or executive who shall appoint these persons to the commission.

(d) No person may be appointed to more than two terms. No member of the commission may be removed by the county commissioner or executive, or county legislative authority if there is no single county commissioner or executive, 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.

(e) The members of the commission may not include any officer, official, or employee of the county or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee.

(f) 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 for the original appointment.

(3) Any change in salary shall be filed by the commission with the county auditor and shall become effective and incorporated into the county budget without further action of the county legislative authority or salary commission.

(4) Salary increases established by the commission shall be effective as to county commissioners and all members of the county legislative authority, regardless of their terms of office.

(5) Salary decreases established by the commission shall become effective as to incumbent county commissioners and councilmembers at the commencement of their next subsequent terms of office.

(6) Salary increases and decreases shall be subject to referendum petition by the people of the county in the same manner as a county ordinance upon filing of such petition with the county auditor within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.

(7) Referendum measures under this section shall be submitted to the voters of the county at the next following general or municipal election occurring thirty days or more after the petition is filed, and shall be otherwise governed by the

provisions of the state Constitution and laws generally applicable to referendum measures.

(8) The action fixing the salary of a county commissioner or councilmember by a commission established in conformity with this section shall supersede any other provision of state statute or county ordinance related to municipal budgets or to the fixing of salaries of county commissioners and councilmembers.

(9) Salaries for county commissioners and councilmembers established under an ordinance or resolution of the county legislative authority in existence on the effective date of this act that substantially complies with this section shall remain in effect unless and until changed in accordance with such charter provision or ordinance.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 13, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 74

[House Bill 1098]

COMMUTE TRIP REDUCTION PROGRAM—FUNDS

AN ACT Relating to use of funds in the commute trip reduction program; and amending RCW 70.94.544.

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

Sec. 1. RCW 70.94.544 and 1991 c 202 s 17 are each amended to read as follows:

A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction task force in carrying out the responsibilities of RCW 70.94.541, and the interagency technical assistance team, including the activities authorized under RCW 70.94.541(2), and to assist counties, cities, and towns implementing commute trip reduction plans. ~~((Funds shall be provided to the counties in proportion to the number of major employers and major worksites in each county. The counties shall provide funds to cities and towns within the county which are implementing commute trip reduction plans in proportion to the number of major employers and major worksites within the city or town.))~~

Passed the House March 20, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 75

[House Bill 1116]

ORTHOTIC DEVICES—TAX EXEMPTIONS

AN ACT Relating to clarifying tax exemptions for sale or use of orthotic devices; amending RCW 82.08.0283 and 82.12.0277; and declaring an emergency.

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

Sec. 1. RCW 82.08.0283 and 1998 c 168 s 2 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic devices and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices prescribed for an individual by a person licensed under chapters 18.22, 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under this section.

Sec. 2. RCW 82.12.0277 and 1998 c 168 s 3 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic devices and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices prescribed for an individual by a person licensed under chapters 18.22, 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

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 13, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 76

[House Bill 1131]

PUBLIC HOSPITAL DISTRICTS

AN ACT Relating to public hospital districts; and amending RCW 70.44.060.

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

Sec. 1. RCW 70.44.060 and 1997 c 3 s 206 are each amended to read as follows:

All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: **PROVIDED**, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of

said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public

hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first ~~((Monday in September))~~ day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the ~~((first Monday in October))~~ fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: **PROVIDED**, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To make contracts, employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make contracts with private

or public institutions for employee retirement programs; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter.

Passed the House March 9, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 77

[Substitute House Bill 1136]

PRODUCT STANDARDS

AN ACT Relating to product standards; amending RCW 43.19A.020; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 43.19A.020 and 1996 c 198 s 1 are each amended to read as follows:

(1) The ~~((USEPA))~~ federal product standards, ~~((as now or hereafter amended))~~ adopted under 42 U.S.C. Sec. 6962(e) as it exists on the effective date of this act, are adopted as the minimum standards for the state of Washington. These standards shall be implemented for at least the products listed in ~~((a) and (b) of)~~ this subsection ~~((by the dates indicated))~~, unless the director finds that a different standard would significantly increase recycled product availability or competition.

~~(a) ((By July 1, 1997:~~

~~—(i)) Paper and paper products;~~

~~(((ii)) (b) Organic recovered materials; ((and~~

~~—(iii)) (c) Latex paint products;~~

~~(((b) By July 1, 1997:~~

~~—(i)) (d) Products for lower value uses containing recycled plastics;~~

~~(((ii)) (e) Retread and remanufactured tires;~~

~~(((iii)) (f) Lubricating oils;~~

~~(((iv)) (g) Automotive batteries;~~

~~(((v)) (h) Building ~~((insulation))~~ products and materials;~~

~~(((vi)) (i) Panelboard; and~~

~~(((vii)) (j) Compost products.~~

(2) By July 1, 2001, the director shall adopt product standards for strawboard manufactured using as an ingredient straw that is produced as a by-product in the production of cereal grain or turf or grass seed and product standards for products made from strawboard.

(3) The standards required by this section shall be applied to recycled product purchasing by the department ~~((and)),~~ other state agencies, and state postsecondary educational institutions. The standards may be adopted or applied by any other local government in product procurement. The standards shall provide for

exceptions under appropriate circumstances to allow purchases of recycled products that do not meet the minimum content requirements of the standards.

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 July 1, 2001.

Passed the House February 27, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 78

[House Bill 1160]

REAL ESTATE APPRAISERS—LICENSING

AN ACT Relating to real estate appraisers: and amending RCW 18.140.155.

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

Sec. 1. RCW 18.140.155 and 1993 c 30 s 16 are each amended to read as follows:

(1) A real estate appraiser from another state who is licensed or certified by another state may apply for registration to receive temporary licensing or certification in Washington by paying a fee and filing a notarized application with the department on a form provided by the department.

(2) The director is authorized to adopt by rule the term or duration of the licensing and certification privileges granted under the provisions of this section ((shall expire ninety days from issuance)). Licensing or certification shall not be renewed ((; nor shall an applicant receive more than two registrations within any twelve-month period)). However, an applicant may receive an extension of a temporary practice permit to complete an assignment, provided that a written request is received by the department prior to the expiration date, stating the reason for the extension.

(3) A temporary practice permit issued under this section allows an appraiser to perform independent appraisal services required by a contract for appraisal services.

(4) Persons granted temporary licensing or certification privileges under this section shall not advertise or otherwise hold themselves out as being licensed or certified by the state of Washington.

~~((4))~~ (5) Persons granted temporary licensure or certification are subject to all provisions under this chapter.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 79

[House Bill 1173]

FIRE DISTRICTS—PURCHASING

AN ACT Relating to fire district purchases; and amending RCW 52.14.110.

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

Sec. 1. RCW 52.14.110 and 2000 c 138 s 209 are each amended to read as follows:

Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of (~~four thousand five hundred~~) ten thousand dollars. However, whenever the estimated cost does not exceed (~~ten~~) fifty thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

(2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment;

(3) Contracts using the small works roster process under RCW 39.04.155; and

(4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 80

[Engrossed Second Substitute House Bill 1180]

PUBLIC HEALTH SYSTEM—FUNDS

AN ACT Relating to obtaining and expending funds for the public health system; amending RCW 43.70.040, 43.84.092, and 43.84.092; adding a new section to chapter 43.70 RCW; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The legislature finds that developing, creating, and maintaining partnerships between the public and private sectors can enhance and augment current public health services. The legislature further finds that the department of health should have the ability to establish such partnerships, and seek out and accept gifts, grants, and other funding to advance worthy public health goals and programs.

(2) It is the intent of the legislature that gifts and other funds received by the department of health under the authority granted by RCW 43.70.040 may be used to expand or enhance program operations so long as program standards established by the department are maintained, but may not supplant or replace funds for federal, state, county, or city-supported programs.

Sec. 2. RCW 43.70.040 and 1995 c 403 s 105 are each amended to read as follows:

In addition to any other powers granted the secretary, the secretary may:

(1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.: **PROVIDED**, That for rules adopted after July 23, 1995, the secretary may not rely solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(2) Appoint such advisory committees as may be necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess. Members of such advisory committees are authorized to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. The secretary and the board of health shall review each advisory committee within their jurisdiction and each statutory advisory committee on a biennial basis to determine if such advisory committee is needed(~~(—The criteria specified in RCW 43.131.070 shall be used to determine whether or not each advisory committee shall be continued))~~);

(3) Undertake studies, research, and analysis necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess. in accordance with RCW 43.70.050;

(4) Delegate powers, duties, and functions of the department to employees of the department as the secretary deems necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.;

(5) Enter into contracts on behalf of the department to carry out the purposes of chapter 9, Laws of 1989 1st ex. sess.;

(6) Act for the state in the initiation of, or the participation in, any intergovernmental program to the purposes of chapter 9, Laws of 1989 1st ex. sess.; or

(7) Solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources.

NEW SECTION. Sec. 3. A new section is added to chapter 43.70 RCW to read as follows:

(1) The public health supplemental account is created in the state treasury. All receipts from gifts, bequests, devises, or funds, whose use is determined to further the purpose of maintaining and improving the health of Washington residents through the public health system must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for maintaining and improving the health of Washington residents

through the public health system. Expenditures from the account shall not be used to pay for or add permanent full-time equivalent staff positions.

(2) The department shall file an annual statement of the financial condition, transactions, and affairs of any program funded under this section in a form and manner prescribed by the office of financial management. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

Sec. 4. RCW 43.84.092 and 2000 2nd sp.s. c 4 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 state higher education construction account, the higher education construction 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 multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system plan 2 account, the public health supplemental 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 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement 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' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, 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 county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement 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 2000 2nd sp.s. c 4 s 6 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 state higher education construction account, the higher education construction 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 multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public health supplemental 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 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement 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' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western

Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, 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 county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement 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 March 1, 2002.

NEW SECTION. Sec. 7. Section 5 of this act takes effect March 1, 2002.

Passed the House March 13, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 81

[House Bill 1205]

CONSUMER LOAN COMPANIES

AN ACT Relating to licensing and regulation of consumer loan companies; amending RCW 31.04.015, 31.04.025, 31.04.045, 31.04.055, 31.04.075, 31.04.085, 31.04.093, 31.04.105, 31.04.145, 31.04.155, 31.04.165, and 31.04.175; adding new sections to chapter 31.04 RCW; and prescribing penalties.

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

Sec. 1. RCW 31.04.015 and 1994 c 92 s 161 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" means a person to whom one or more licenses have been issued.

(4) "Director" means the director of financial institutions.

(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(8) "Applicant" means a person applying for a license under this chapter.

(9) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

(10) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(11) "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a licensee, to make or assist a person in applying to obtain a loan.

(12) "Making a loan" means closing a loan in a person's name, or advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(13) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter

cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same loan transaction.

(14) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(15) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(16) "Senior officer" means an officer of a licensee at the vice-president level or above.

(17) "Third party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

Sec. 2. RCW 31.04.025 and 1991 c 208 s 4 are each amended to read as follows:

Each loan made to a resident of this state by a licensee is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of another license issued pursuant to a law of this state or under other authority of a law of this state. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan ((including but not restricted to plans having all of the following characteristics:

—(1) Where credit cards are issued pursuant to a plan whereby the organization issuing such cards shall be enabled to acquire those certain obligations which its members in good standing incur with those persons with whom the organization has entered into agreements setting forth said plan, and where the obligations are incurred pursuant to such agreements; or whereby the organization issuing such cards shall be enabled to extend credit to its members;

—(2) Any fee for such credit cards is designed to cover only the administrative costs of the plan and does not exceed twenty-five dollars per year;

—(3) Any charges, discounts, or fees resulting from the acquisition of such charges shall be paid to the organization issuing said credit cards (or to such other organizations as may be authorized by the issuing organization) by the persons, corporations, or associations with whom the organization has entered into such written agreements)).

NEW SECTION. Sec. 3. A new section is added to chapter 31.04 RCW to read as follows:

It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead 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) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Fail to make disclosures to loan applicants as required by section 9 of this act and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property; or

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest or otherwise fail to comply with any requirement of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12, or any other applicable federal statute, as now or hereafter amended, in any advertising of residential mortgage loans or any other consumer loan company activity.

Sec. 4. RCW 31.04.045 and 1994 c 92 s 162 are each amended to read as follows:

(1) Application for a license under this chapter must be in writing and in the form prescribed by the director. The application must contain at least the following information:

(a) The name and the business (~~and the residence~~) addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;

(d) The street address, county, and municipality (~~(where)~~) from which business is to be conducted; and

(e) Such other information as the director may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the director an investigation fee and the ~~((initial year's))~~ license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(3) Each applicant shall file and maintain a surety bond, approved by the director, ~~((in the penal sum of one hundred thousand dollars;))~~ executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed in the aggregate the penal sum ((in the aggregate)) of the bond. The penal sum of the bond shall be one hundred thousand dollars for each licensed location up to and including five licensed locations, and an additional ten thousand dollars for each licensed location in excess of five licensed locations, except that a licensee who makes a loan secured by real property shall maintain at a minimum a surety bond with a penal sum of not less than four hundred thousand dollars. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section.

Sec. 5. RCW 31.04.055 and 1994 c 92 s 163 are each amended to read as follows:

(1) The director shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the director finds that:

~~(a) The applicant has paid all required fees((-has complied));~~

(b) The applicant has submitted a complete application in compliance with RCW 31.04.045((-and that));

(c) Neither the applicant nor its officers or principals have had a license issued under this section or any other section, in this state or another state, revoked or suspended within the last five years of the date of filing of the application;

(d) Neither the applicant nor any of its officers or principals have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony or a violation of the banking laws of this state or of the United States within seven years of the filing of an application; and

(e) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The director shall approve or deny every application for license under this chapter within ~~((sixty))~~ ninety days from the filing of a complete application with the fees and the approved bond.

Sec. 6. RCW 31.04.075 and 1994 c 92 s 164 are each amended to read as follows:

The licensee may not maintain more than one place of business under the same license, but the director may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the director. ~~((A licensee who has five licensed locations shall not be required to maintain a bond in a penal sum exceeding ten thousand dollars for each additionally licensed location.))~~

Whenever a licensee wishes to change the place of business to a street address other than that designated in the license, the licensee shall give written notice to the director as required by rule, pay the license fee, and ~~((shall))~~ obtain the director's approval.

Sec. 7. RCW 31.04.085 and 1994 c 92 s 165 are each amended to read as follows:

A licensee shall, for each license held by any person, on or before the ~~((twentieth))~~ first day of each ~~((December))~~ March, pay to the director an annual ~~((license fee))~~ assessment as determined by rule by the director. The licensee shall be responsible for payment of the annual assessment for the previous calendar year if the licensee had a license for any time during the preceding calendar year, regardless of whether they surrendered their license during the calendar year or whether their license was suspended or revoked. At the same time the licensee shall file with the director the required bond or otherwise demonstrate compliance with RCW 31.04.045.

Sec. 8. RCW 31.04.093 and 1994 c 92 s 166 are each amended to read as follows:

(1) The director shall enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending, or to provide settlement services associated with lending, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may suspend or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license. The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee.

((2)) (4) The director may impose fines of up to one hundred dollars per day upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any order or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter;

or

(c) Make restitution to a borrower or other person who is damaged as a result of a violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending, or perform a settlement service related to lending, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;

or

(e) A violation of section 3 of this act.

(7) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing shall be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(8) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter.

~~((3))~~ (9) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

~~((4))~~ (10) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

NEW SECTION. Sec. 9. A new section is added to chapter 31.04 RCW to read as follows:

Within three business days following receipt of a loan application, a licensee shall provide to each borrower a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and all other applicable federal laws and regulations, as now or hereafter amended, shall be deemed to constitute compliance with the disclosure requirements of this section when it is provided to the borrower within three days of receipt of a loan application. Each licensee shall comply with all other applicable federal and state laws and regulations.

Sec. 10. RCW 31.04.105 and 1998 c 28 s 1 are each amended to read as follows:

Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

~~(5)~~ (5) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

~~((5))~~ (6) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

~~((6))~~ (7) Make open-end loans as provided in this chapter;

~~((7))~~ (8) Charge and collect a fee for dishonored checks in an amount approved by the director; and

~~((8))~~ (9) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

Sec. 11. RCW 31.04.145 and 1995 c 9 s 2 are each amended to read as follows:

(1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by ~~((a))~~ designees, investigate or examine the loans and business and ~~((examine))~~, wherever located, the books, accounts, records, ~~((and))~~ papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business ~~((described in RCW 31.04.035))~~ making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For ~~((that))~~ these purposes, the director ~~((and))~~ or designated representatives shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director ~~((and))~~ or persons designated by the director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information. If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(2) The director shall make such ~~((an))~~ periodic examinations of the affairs, business, office, and records of each licensee as determined by rule. ~~((The))~~

(3) Every licensee ((so)) examined or investigated by the director or the director's designee shall pay to the director the ((actual)) cost of ((examining and supervising)) the examination or investigation of each licensed place of business as determined by rule by the director.

Sec. 12. RCW 31.04.155 and 1994 c 92 s 170 are each amended to read as follows:

The licensee shall keep and use in the business such books, accounts, ~~((and)) records, papers, documents, files, and other information~~ as will enable the director to determine whether the licensee is complying with this chapter and with the rules adopted by the director under this chapter. The director shall have free access to such books, accounts, ~~((and)) records, papers, documents, files, and other information~~ wherever located. Every licensee shall preserve the books, accounts, ~~((and)) records, papers, documents, files, and other information relevant to a loan~~ for at least ~~((two years))~~ twenty-five months after making the final entry on any loan ~~((recorded in them))~~. No licensee or person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, papers, documents, files, or other information.

Each licensee shall, on or before the first day of March of each year, file a report with the director giving such relevant information as the director may reasonably ~~((may))~~ require concerning the business and operations ~~((during the preceding calendar year))~~ of each licensed place of business conducted ~~((by the licensee within the state))~~ during the preceding calendar year. The report must be made under oath and must be in the form prescribed by the director, who shall make and publish annually an analysis and recapitulation of the reports. Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty.

Sec. 13. RCW 31.04.165 and 1994 c 92 s 171 are each amended to read as follows:

(1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by loan companies subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

(3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

~~(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director shall not be required to post a bond in any court proceedings.~~

Sec. 14. RCW 31.04.175 and 1994 c 92 s 172 are each amended to read as follows:

~~(1) (Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty.~~

~~—(2)) A person who violates, or knowingly aids or abets in the violation of any provision of this chapter, for which no penalty has been prescribed, and a person who fails to perform any act that it is ((made)) his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor. ((No person who has been convicted for the violation of the banking laws of this state or of the United States may be permitted to engage in the business, or become an officer or official, of any licensee in this state.~~

~~—(2)) (2) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the director or his or her agent.~~

NEW SECTION, Sec. 15. A new section is added to chapter 31.04 RCW to read as follows:

The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies under this chapter, and any review or appeal of such action, shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION, Sec. 16. A new section is added to chapter 31.04 RCW to read as follows:

The director or designated persons may, at his or her discretion, take such action as provided for in this chapter to enforce this chapter. If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action, then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

NEW SECTION, Sec. 17. A new section is added to chapter 31.04 RCW to read as follows:

The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

Passed the House March 20, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 82

[House Bill 1216]

CHILDREN—DEATH INVESTIGATION

AN ACT Relating to investigating sudden unexplained deaths of children; and amending RCW 43.103.100 and 68.50.104.

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

Sec. 1. RCW 43.103.100 and 1991 c 176 s 6 are each amended to read as follows:

(1) The council shall research and develop an appropriate training component on the subject of sudden, unexplained child death, including but not limited to sudden infant death syndrome. The training component shall include, at a minimum:

~~((1))~~ **(a)** Medical information on sudden, unexplained child death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigation;

~~((2))~~ **(b)** Information on community resources and support groups available to assist families who have lost a child to sudden, unexplained death, including sudden infant death syndrome; and

~~((3))~~ ~~Development and adoption of an up-to-date protocol of investigation in cases of sudden, unexplained child death, including the importance of a consistent policy of thorough death scene investigation, and an autopsy in unresolved cases as appropriate;~~

~~((4))~~ **(c)** The value of timely communication between the county coroner or medical examiner and the public health department, when a sudden, unexplained child death occurs, in order to achieve a better understanding of such deaths, and connecting families to various community and public health support systems to enhance recovery from grief.

(2) The council shall work with volunteer groups with expertise in the area of sudden, unexplained child death, including but not limited to the SIDS ~~((Northwest~~

~~Regional Center at Children's Hospital, the Washington chapter of the national SHDS)) foundation((:)) of Washington and the Washington association of county officials.~~

~~((Upon development of an appropriate curriculum, agreed upon by the council; the training module shall be offered to first responders, coroners, medical examiners, prosecuting attorneys serving as coroners, and investigators, both voluntarily through their various associations and as a course offering at the criminal justice training center.))~~

(3) Basic training for death investigators offered by the Washington association of coroners and medical examiners and the criminal justice training commission shall include a module which specifically addresses the investigations of the sudden unexplained deaths of children under the age of three. The training module shall include a scene investigation protocol endorsed or developed by the council. A similar training curriculum shall be required for city and county law enforcement officers and emergency medical personnel certified by the department of health as part of their basic training through the criminal justice training commission or the department of health emergency medical training certification program.

(4) Each county shall use a protocol that has been endorsed or developed by the council for scene investigations of the sudden unexplained deaths of children under the age of three. The council may utilize guidelines from the center for disease control and other appropriate resources.

(5) The council shall develop a protocol for autopsies of children under the age of three whose deaths are sudden and unexplained. This protocol shall be used by pathologists who are not certified by the American board of pathology in forensic pathology, and who are providing autopsy services to coroners and medical examiners.

Sec. 2. RCW 68.50.104 and 1983 1st ex.s. c 16 s 14 are each amended to read as follows:

(1) The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the department shall bear the cost of such autopsy((; and except when performed on a body of an infant under the age of three years by the University of Washington medical school, in which case the medical school shall bear the cost of such autopsy)).

(2) Except as provided in (c) of this subsection, when the county bears the cost of an autopsy, it shall be reimbursed from the death investigations(?) account, established by RCW 43.79.445, as follows:

((+)) (a) Up to forty percent of the cost of contracting for the services of a pathologist to perform an autopsy; ((and
—(2)) (b) Up to twenty-five percent of the salary of pathologists who are primarily engaged in performing autopsies and are ((+)) (i) county coroners or

county medical examiners, or ~~((b))~~ (ii) employees of a county coroner or county medical examiner; and

(c) When the county bears the cost of an autopsy of a child under the age of three whose death was sudden and unexplained, the county shall be reimbursed for the expenses of the autopsy when the death scene investigation and the autopsy have been conducted under RCW 43.103.100 (4) and (5), and the autopsy has been done at a facility designed for the performance of autopsies.

Payments from the account shall be made pursuant to biennial appropriation: PROVIDED, That no county may reduce funds appropriated for this purpose below 1983 budgeted levels.

Passed the House March 9, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 83

[House Bill 1366]

CREDIT UNIONS

AN ACT Relating to credit unions; amending RCW 31.12.005, 31.12.065, 31.12.085, 31.12.105, 31.12.115, 31.12.225, 31.12.235, 31.12.255, 31.12.267, 31.12.326, 31.12.335, 31.12.365, 31.12.367, 31.12.402, 31.12.404, 31.12.426, 31.12.428, 31.12.436, 31.12.438, 31.12.461, 31.12.464, 31.12.467, 31.12.471, 31.12.474, 31.12.516, 31.12.545, 31.12.565, 31.12.567, 31.12.569, 31.12.571, 31.12.575, 31.12.585, 31.12.595, 31.12.625, 31.13.010, and 31.13.020; adding a new section to chapter 31.12 RCW; decodifying RCW 31.13.900; and repealing RCW 31.12.275, 31.12.407, 31.12.445, 31.12.448, 31.12.555, 31.12.605, 31.12.615, 31.12.627, 31.13.030, 31.13.040, and 31.13.050.

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

Sec. 1. RCW 31.12.005 and 1997 c 397 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Board officer" means an officer of the board elected under RCW 31.12.265(1).

(3) "Branch" of a credit union, out-of-state credit union, or foreign credit union means any facility that meets all of the following criteria:

(a) The facility is a staffed physical facility ((where shares and deposits are taken. The term does not include an automated teller machine or a machine permitting members to communicate with credit union employees who are not located at the site of the machine, unless employees of the credit union at the site of the machine take shares and deposits on a regular basis. A facility is not deemed to be a branch of a credit union, regardless of any affiliation, accommodation arrangement, or other relationship between the organization owning or leasing the facility and the credit union, unless the facility is));

(b) The facility is owned or leased in whole or part((, directly or indirectly,)) by the credit union or its credit union service organization; and

(c) Deposits and withdrawals may be made, or shares purchased, through staff at the facility.

~~((4))~~ ~~("Business loan" means a loan for business, investment, commercial, or agricultural purposes:~~

~~—((5))~~ ~~"Capital" means a credit union's reserves, undivided earnings, and allowance(s) for loan and lease losses, and other items that may be included under section 16 of this act or by rule of the director.~~

~~((6))~~ ~~"Consumer loan" means a loan for consumer, family, or household purposes:~~

~~—((7))~~ ~~(5) "Credit union" means a credit union organized and operating under this chapter.~~

~~((8))~~ ~~(6) "Credit union service organization" means an organization that a credit union has invested in pursuant to RCW 31.12.436(8), or a credit union service organization invested in by an out-of-state ((credit union or), federal, or foreign credit union.~~

~~((9))~~ ~~(7) "Director" means the director of financial institutions.~~

~~((10))~~ ~~(8) "Federal credit union" means a credit union organized and operating under the laws of the United States.~~

~~((11))~~ ~~(9) "Financial institution" means any commercial bank, trust company, savings bank, or savings and loan association, whether state or federally chartered, and any credit union, out-of-state credit union, or federal credit union.~~

~~((12))~~ ~~(10) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.~~

~~((13))~~ ~~(11) "Insolvency" means:~~

(a) If, under generally accepted accounting principles, the recorded value of the credit union's assets are less than its obligations to its share account holders, depositors, creditors, and others; or

(b) If it is likely that the credit union will be unable to pay its obligations or meet its share account holders' and depositors' demands in the normal course of business.

~~((14))~~ ~~(12) "Loan" means any loan, overdraft line of credit, extension of credit, or lease, in whole or in part.~~

~~((15))~~ ~~(13) "Material violation of law" means:~~

(a) If the credit union or person has violated a material provision of:

(i) Law;

(ii) Any cease and desist order issued by the director;

(iii) Any condition imposed in writing by the director in connection with the approval of any application or other request of the credit union; or

(iv) Any written agreement entered into with the director;

(b) If the credit union or person has concealed any of the credit union's books, papers, records, or assets, or refused to submit the credit union's books, papers, records, or affairs for inspection to any examiner of the state or, as appropriate, to any examiner of the national credit union administration; or

(c) If the person has breached his or her fiduciary duty to the credit union.

~~((+6))~~ (14) "Membership share" means an initial share ~~((required to be purchased))~~ that a credit union may require a person to purchase in order to establish and maintain membership in a credit union.

~~((+7))~~ (15) "Net ~~((capital))~~ worth" means a credit union's capital, less the allowance for loan and lease losses.

~~((+8))~~ (16) "Operating officer" means an ~~((officer))~~ employee of a credit union designated ~~((under))~~ is an officer pursuant to RCW 31.12.265(2).

~~((+9))~~ (17) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

~~((+20))~~ (18) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

~~((+21))~~ (19) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

~~((+22))~~ (20) "Principally" or "primarily" means more than one-half.

~~((+23))~~ (21) "Senior operating officer" includes:

(a) An operating officer who is a vice-president or above; and

(b) Any employee who has policy-making authority.

(22) "Small credit union" means a credit union with up to ten million dollars in total assets.

(23) "Unsafe or unsound condition" means, but is not limited to:

(a) If the credit union is insolvent;

(b) If the credit union has incurred or is likely to incur losses that will deplete all or substantially all of its ~~((capital))~~ net worth; or

(c) If the credit union is in imminent danger of losing its share and deposit insurance or guarantee.

(24) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits.

Sec. 2. RCW 31.12.065 and 1997 c 397 s 7 are each amended to read as follows:

(1) Persons applying for the organization of a credit union shall adopt bylaws that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

(a) The name of the credit union;

(b) The field of membership of the credit union;

(c) Reasonable qualifications for membership in the credit union, including, but not limited to, the minimum number of shares, and the payment of a membership fee, if any, required for membership, and the procedures for expelling a member;

(d) The number of directors and supervisory committee members, and the length of terms they serve and the permissible term length of any interim director or supervisory committee member;

(e) Any qualification for eligibility to serve on the credit union's board~~(f)~~ or supervisory committee;

(f) The number of credit union employees that may serve on the board, if any;

(g) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee ~~(are to)~~ will be notified of meetings;

~~(h) ((The powers and duties of board officers;~~

~~—(i))~~ The timing of the annual membership meeting;

~~((j))~~ (j) The manner in which members may call a special membership meeting;

~~((k))~~ (j) The manner in which members ~~(are to)~~ will be notified of membership meetings;

~~((l))~~ (k) The number of members constituting a quorum at a membership meeting;

~~((m))~~ (l) Provisions, if any, for the indemnification of directors, supervisory committee members, officers, employees, and others by the credit union, if not included in the articles of incorporation; and

~~((n))~~ (m) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the bylaws in duplicate to the director.

Sec. 3. RCW 31.12.085 and 1997 c 397 s 9 are each amended to read as follows:

(1) Upon approval under RCW 31.12.075(2), the director shall deliver a copy of the articles of incorporation to the secretary of state for filing. Upon receipt of the approved articles of incorporation and a twenty dollar filing fee provided by the applicants, the secretary of state shall file the articles of incorporation.

(2) Upon filing of the approved articles of incorporation by the secretary of state, the persons named in the articles of incorporation and their successors may conduct business as a credit union, having the powers, duties, and obligations set forth in this chapter. A credit union may not conduct business until the articles have been filed by the secretary of state.

(3) A credit union shall organize and begin conducting business within six months of the date that its articles of incorporation are filed by the secretary of state or its charter is void. However, the director may grant ~~((an))~~ extensions of the six-month period. ~~((The director may not grant a single extension exceeding three months, but may grant as many extensions to a credit union as circumstances require.))~~

Sec. 4. RCW 31.12.105 and 1997 c 397 s 10 are each amended to read as follows:

A credit union's articles of incorporation may be amended by the board with the approval of the director. Complete applications for amendments to the articles

must be approved or denied by the director within sixty days of receipt. Amendments to a credit union's articles of incorporation must conform with RCW 31.12.055.

Upon approval, the director shall promptly deliver the articles' amendments, including any necessary filing fees paid by the applicant, to the secretary of state for filing. ~~((Amendments to a credit union's articles of incorporation must conform with RCW 31.12.055.))~~ The articles' amendments are effective upon filing of the amendments by the secretary of state.

Sec. 5. RCW 31.12.115 and 1997 c 397 s 11 are each amended to read as follows:

(1) A credit union's field of membership bylaws may be amended by the board with approval of the director. ~~((A#))~~ Complete applications to amend a credit union's field of membership bylaws must be approved or denied by the director within sixty days of receipt.

(2) ~~((Bylaw amendments, other than those requiring the approval of the director under subsection (1) of this section, may be approved at any regular board meeting, or any special board meeting called for the purpose of amending the credit union's bylaws))~~ A credit union's other bylaws may be amended by the board

(3) Any amendments to a credit union's bylaws must conform with RCW 31.12.065.

Sec. 6. RCW 31.12.225 and 1997 c 397 s 14 are each amended to read as follows:

(1) The business and affairs of a credit union shall be managed by a board of not less than five and not greater than fifteen directors.

(2) The directors must be elected at the credit union's annual membership meeting. They shall hold their offices until their successors are qualified and elected or appointed.

(3) Directors shall be elected to terms of between one and three years, as provided in the bylaws. If the terms are longer than one year, the directors must be divided into classes, and an equal number of directors, as ~~((near))~~ nearly as possible, must be elected each year.

(4) Any ~~((vacancies))~~ vacancy on the board must be filled by an interim director(s) appointed by the board, unless the interim director would serve a term of fewer than ninety days. Interim directors appointed to fill vacancies created by expansion of the board will serve until the next annual meeting of members. Other interim directors will serve out the unexpired term of the former director, unless provided otherwise in the credit union's bylaws.

(5) The board will ~~((meet as often as necessary, but))~~ have regular meetings not less frequently than once each month.

Sec. 7. RCW 31.12.235 and 1997 c 397 s 15 are each amended to read as follows:

(1) A director must be a natural person and a member of the credit union. If a director ceases to be a member of the credit union, the director shall no longer serve as a director.

(2) ~~((Unless reasonably excused by the board, a director shall no longer serve as a director if the))~~ (a) If a director is absent from ((more than thirty-three percent)) four of the regular board meetings in any twelve-month period in a term without being reasonably excused by the board, the director shall no longer serve as a director for the period remaining in the term.

(b) The board secretary shall promptly notify the director that he or she shall no longer serve as a director. Failure to provide notice does not affect the termination of the director's service under (a) of this subsection

(3) A director must meet any qualification requirements set forth in the credit union's bylaws. If a director fails to meet these requirements, the director shall no longer serve as a director.

(4) The operating officers and employees of the credit union may serve as directors of the credit union, but only as permitted by the credit union's bylaws. In no event may the operating officers and employees of the credit union constitute a majority of the board.

Sec. 8. RCW 31.12.255 and 1997 c 397 s 17 are each amended to read as follows:

The business and affairs of a credit union shall be managed by the board of the credit union. The duties of the board include, but are not limited to, the duties enumerated in this section. The duties listed in subsection (1) of this section may not be delegated by the credit union's board of directors. The duties listed in subsection (2) of this section may be delegated to a committee, officer, or employee, with appropriate reporting to the board.

(1) The board shall:

(a) Set the par value of shares, if any, of the credit union;

(b) Set the minimum number of shares, if any, required for membership;

(c) Establish the loan policies under which loans may be approved ~~((including policies on any automated loan approval programs));~~

(d) Establish the conditions under which a member may be expelled for cause;

(e) Fill vacancies on all committees except the supervisory committee;

(f) Approve an annual operating budget ~~((or financial plan))~~ for the credit union;

(g) Designate those persons or positions authorized to execute or certify documents or records on behalf of the credit union;

(h) Review the supervisory committee's annual report; and

(i) Perform such other duties as the members may direct.

(2) In addition, unless delegated, the board shall:

(a) Act upon applications for membership in the credit union;

(b) Determine the maximum amount of shares and deposits that a member may hold in the credit union;

- (c) Declare dividends on shares and set the rate of interest on deposits;
- (d) Set the fees, if any, to be charged by the credit union to its members for the right to be a member of the credit union and for services rendered by the credit union;
- (e) Determine the amount which may be loaned to a member together with the terms and conditions of loans;
- (f) Establish policies under which the credit union may borrow and invest; and
- (g) Approve the charge-off of credit union losses.

Sec. 9. RCW 31.12.267 and 1997 c 397 s 19 are each amended to read as follows:

Directors ~~((and)), board officers, and senior operating officers~~ are deemed to stand in a fiduciary relationship to the credit union, and must discharge the duties of their respective positions:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director or ~~((board))~~ officer reasonably believes to be in the best interests of the credit union.

Sec. 10. RCW 31.12.326 and 1997 c 397 s 22 are each amended to read as follows:

(1) A supervisory committee of at least three members must be elected at the annual membership meeting of the credit union. Members of the supervisory committee shall serve a term of three years, unless sooner removed under this chapter or until their successors are qualified and elected or appointed. The members of the supervisory committee shall be divided into classes so that as equal a number as is possible is elected each year.

~~(2)(a) If a supervisory committee member is absent from more than one-third of the committee meetings in any twelve-month period in a term without being reasonably excused by the committee, the member shall no longer serve as a member of the committee for the period remaining in the term.~~

~~(b) The supervisory committee shall promptly notify the member that he or she shall no longer serve as a committee member. Failure to provide notice does not affect the termination of the member's service under (a) of this subsection.~~

~~(3) A supervisory committee member must be a natural person and a member of the credit union. If a member of the supervisory committee ceases to be a member of the credit union, the ~~((member's office becomes vacant))~~ member shall no longer serve as a committee member. The chairperson of the supervisory committee may not serve as a board officer.~~

~~(4) Any vacancy on the committee must be filled by an interim member appointed by the committee, unless the interim member would serve a term of fewer than ninety days. Interim members appointed to fill vacancies created by expansion of the committee will serve until the next annual meeting of members. Other interim members may serve out the unexpired term of the former member.~~

unless provided otherwise by the credit union's bylaws. However, if all positions on the committee are vacant at the same time, the board may appoint interim members to serve until the next annual membership meeting.

~~((3))~~ (5) No operating officer or employee of a credit union may serve on the credit union's supervisory committee. No more than one director may be a member of the supervisory committee at the same time, unless provided otherwise by the credit union's bylaws. No member of the supervisory committee may serve on the credit committee or investment committee of the credit union while serving on the supervisory committee.

Sec. 11. RCW 31.12.335 and 1997 c 397 s 23 are each amended to read as follows:

(1) The supervisory committee of a credit union shall:

~~((1))~~ (a) Meet ~~((as often as necessary and))~~ at least quarterly;

~~((2))~~ (b) Keep fully informed as to the financial condition of the credit union and the decisions of the credit union's board;

~~((3) Annually)~~ (c) Perform or arrange for a complete annual audit of ~~((internal controls, loans, investments, cash, general ledger accounts, including, but not limited to, income and expense, and))~~ the credit union and a verification of its members' (share and deposit) accounts; and

~~((4))~~ (d) Report its findings and recommendations to the board and make an annual report to members at each annual membership meeting.

(2) At least one supervisory committee member may attend each regular board meeting.

Sec. 12. RCW 31.12.365 and 1997 c 397 s 25 are each amended to read as follows:

(1) Directors and members of committees shall not receive compensation for their service as directors and committee members. However, this subsection does not prohibit directors or committee members from receiving:

(a) Gifts of minimal value; and

(b) Insurance coverage or incidental services, available to employees generally ~~((, and gifts of minimal value))~~.

(2) Directors and members of committees may receive reimbursement for reasonable expenses incurred on behalf of themselves and their spouses in the performance of the directors' and committee members' duties.

(3) Loans to directors and supervisory and credit committee members may not be made under more favorable terms and conditions than those made to members generally.

Sec. 13. RCW 31.12.367 and 1997 c 397 s 26 are each amended to read as follows:

(1) Each credit union must be adequately insured against risk. In addition, each director, officer, committee member, and employee of a credit union must be adequately bonded ~~((in an amount and in accordance with conditions established by the director))~~.

(2) When ~~((the))~~ a credit union receives notice that its fidelity bond coverage ~~((under subsection (1) of this section is))~~ will be suspended or terminated, the ~~((board of the affected))~~ credit union shall notify the director in writing ~~((within five days of receipt))~~ not less than thirty-five days prior to the effective date of the notice of suspension or termination.

Sec. 14. RCW 31.12.402 and 1997 c 397 s 30 are each amended to read as follows:

A credit union may:

(1) Issue shares to and receive deposits from its members in accordance with RCW 31.12.416;

(2) Make loans to its members in accordance with RCW 31.12.426 and 31.12.428;

(3) Pay dividends ~~((or))~~ and interest to its members in accordance with RCW 31.12.418;

(4) Impose reasonable charges for the services it provides to its members;

(5) Impose financing charges and reasonable late charges in the event of default on loans, subject to applicable law, and recover reasonable costs and expenses, including, but not limited to, collection costs, and reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due, if provided for in the note or agreement signed by the borrower;

(6) Acquire, lease, hold, assign, pledge, sell, or otherwise dispose of interests in personal property and in real property in accordance with RCW 31.12.438;

(7) Deposit and invest funds in accordance with RCW 31.12.436;

(8) Borrow money, up to a maximum of fifty percent of its total shares, deposits, and net ~~((capital))~~ worth;

(9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union, out-of-state credit union, or federal credit union. However, a credit union may not discount or sell all, or substantially all, of its assets without the approval of the director;

(10) Accept deposits of deferred compensation of its members;

(11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;

(12) Engage in activities and programs as requested by the federal government, this state, and any agency or political subdivision thereof, when the activities or programs are not inconsistent with this chapter;

(13) Hold membership in credit unions, out-of-state credit unions, or federal credit unions and in organizations controlled by or fostering the interests of credit unions, including, but not limited to, a central liquidity facility organized under state or federal law;

(14) Pay additional dividends ~~((or))~~ and interest to members, or an interest rate refund to borrowers;

(15) Enter into lease agreements, lease contracts, and lease-purchase agreements with members;

(16) ~~((Procure for, or sell to its members))~~ Act as insurance agent or broker for the sale to members of:

(a) Group life, accident, health, and credit life and disability insurance; and

(b) Other insurance that other types of Washington state-chartered financial institutions are permitted to sell, on the same terms and conditions that these institutions are permitted to sell such insurance;

(17) Impose a reasonable service charge for the administration and processing of accounts that remain dormant for a period of time specified by the ~~((board))~~ credit union;

(18) Establish and operate on-premises or off-premises electronic facilities;

(19) Enter into formal or informal agreements with another credit union for the purpose of fostering the development of the other credit union;

(20) Work with community leaders to develop and prioritize efforts to improve the areas where their members reside by making investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code;

(21) Limit the personal liability of its directors in accordance with provisions of its articles of incorporation that conform with RCW 23B.08.320;

(22) Indemnify its directors, supervisory committee members, officers, employees, and others in accordance with provisions of its articles of incorporation or bylaws that conform with RCW 23B.08.500 through 23B.08.600; and

(23) Exercise such incidental powers as are necessary or convenient to enable it to conduct the business of a credit union.

Sec. 15. RCW 31.12.404 and 1997 c 397 s 31 are each amended to read as follows:

(1) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a credit union has under the laws of this state, a credit union ~~((may exercise any of))~~ has the powers and authorities ~~((conferred as of))~~ that a federal credit union had on December 31, 1993, ~~((upon federal credit unions))~~ or a subsequent date not later than the effective date of this section.

(2) Notwithstanding any other provision of law, and in addition to the powers and authorities ~~((conferred)),~~ express or implied, that a credit union has under subsection (1) of this section, ~~((the director may, by rule, authorize))~~ a credit union ~~((s to exercise any of))~~ has the powers and authorities ~~((conferred at the time of the adoption of the rule upon federal credit unions))~~ that a federal credit union has, and an out-of-state credit union operating a branch in Washington has, subsequent to the effective date of this section, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of

credit unions, and maintains the fairness of competition and parity between credit unions and federal or out-of-state credit unions. However, a credit union:

- (a) Must still comply with RCW 31.12.408; and
- (b) Is not granted the field of membership powers or authorities of any out-of-state credit union operating a branch in Washington.

(3) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or out-of-state credit unions apply to credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted credit unions solely under this section.

(4) As used in this section, "powers and authorities" include ~~((without limitation))~~, but are not limited to, powers and authorities in corporate governance matters.

NEW SECTION. Sec. 16. A new section is added to chapter 31.12 RCW to read as follows:

(1) A credit union may apply in writing to the director for designation as a low-income credit union. The criteria for approval of this designation are as follows:

(a) At least fifty percent of a substantial and well-defined segment of the credit union's members or potential primary members earn no more than eighty percent of the state or national median income, whichever is higher;

(b) The credit union must submit an acceptable written plan on marketing to and serving the well-defined segment;

(c) The credit union must agree to submit annual reports to the director on its service to the well-defined segment; and

(d) The credit union must submit other information and satisfy other criteria as may be required by the director.

(2)(a) Among other powers and authorities, a low-income credit union may:

(i) Issue secondary capital accounts approved in advance by the director upon application of the credit union; and

(ii) Accept shares and deposits from nonmembers.

(b) A secondary capital account is:

(i) Over one hundred thousand dollars, or a higher amount as established by the director;

(ii) Nontransactional;

(iii) Owned by a nonnatural person; and

(iv) Subordinate to other creditors.

(3) The director may adopt rules for the organization and operation of low-income credit unions including, but not limited to, rules concerning secondary capital accounts and requiring disclosures to the purchasers of the accounts.

Sec. 17. RCW 31.12.426 and 1997 c 397 s 34 are each amended to read as follows:

(1) A credit union may make secured and unsecured loans to its members under policies established by the board, subject to the loans to one borrower limits provided for in RCW 31.12.428. Each loan must be evidenced by records adequate to support enforcement or collection of the loan and any review of the loan by the director. ~~((Business))~~ Loans must be in compliance with rules adopted by the director.

(2) A credit union may obligate itself to purchase loans in accordance with RCW 31.12.436(1), if the credit union's underwriting policies would have permitted it to originate the loans.

~~((3) Consumer loans must be given preference, and in the event there are not sufficient funds available to satisfy all approved consumer loan applications, further preference must be given to small loans.))~~

Sec. 18. RCW 31.12.428 and 1997 c 397 s 35 are each amended to read as follows:

(1) No loan may be made to any borrower if the loan would cause the borrower to be indebted to the credit union ~~((upon consumer and business loans))~~ on all types of loans in an aggregated amount exceeding ten thousand dollars or twenty-five percent of the capital of the credit union, whichever is greater, without the approval of the director.

(2) The director by rule may establish separate limits on business loans to one borrower.

Sec. 19. RCW 31.12.436 and 1997 c 397 s 36 are each amended to read as follows:

A credit union may invest its funds ~~((in excess of loans))~~ in any of the following, as long as they are deemed prudent by the board:

(1) Loans held by credit unions, out-of-state credit unions, or federal credit unions; loans to members held by other lenders; and loans to nonmembers held by other lenders, with the approval of the director;

(2) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(3) Obligations issued by corporations designated under 31 U.S.C. Sec. 9101, or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association, or other government-sponsored enterprise;

(4) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States has been named to act as trustee;

(5) Share or deposit accounts of other financial institutions, the accounts of which are federally insured or insured or guaranteed by another insurer or guarantor approved by the director. The shares and deposits made by a credit union under this subsection may exceed the insurance or guarantee limits

established by the organization insuring or guaranteeing the institution into which the shares or deposits are made;

(6) Common trust or mutual funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(7) Up to five percent of the capital of the credit union, in debt or equity issued by an organization owned by the Washington credit union league;

(8) Shares, stocks, loans, or other obligations of ~~((an))~~ organizations whose primary purpose is to strengthen, advance, or provide services to the credit union industry ~~((and))~~ or credit union members. ~~((Other than investment in an organization that is wholly owned by the credit union and whose activities are limited exclusively to those authorized by RCW 31.12.402, an investment under this subsection shall be limited to one percent of the assets of the credit union, but a credit union may, in addition to the investment, lend to the organization an amount not exceeding an additional one percent of the assets of the credit union))~~
A credit union may in the aggregate invest an amount not to exceed one percent of its assets in organizations under this subsection. In addition, a credit union may in the aggregate lend an amount not to exceed one percent of its assets to organizations under this subsection. These limits do not apply to investments in, and loans to, an organization:

(a) That is wholly owned by one or more credit unions or federal or out-of-state credit unions; and

(b) Whose activities are limited exclusively to those authorized by this chapter for a credit union;

(9) Loans to credit unions, out-of-state credit unions, or federal credit unions. The aggregate of loans issued under this subsection is limited to twenty-five percent of the total shares and deposits of the lending credit union;

(10) Key person insurance policies, the proceeds of which inure exclusively to the benefit of the credit union; or

(11) Other investments approved by the director upon written application.

Sec. 20. RCW 31.12.438 and 1997 c 397 s 37 are each amended to read as follows:

(1) A credit union may invest in real property or leasehold interests primarily for its own use in conducting business, including, but not limited to, structures and fixtures attached to real property, subject to the following limitations:

(a) The credit union's net ~~((capital))~~ worth equals at least five percent of the total of its share and deposit accounts;

(b) The board approves the investment; and

(c) The aggregate of all such investments does not exceed seven and one-half percent of the total of its share and deposit accounts.

(2) If the real property or leasehold interest is acquired for future expansion, the credit union must satisfy the use requirement in subsection (1) of this section within three years after the credit union makes the investment.

(3) The director may, upon written application, waive any of the limitations listed in subsection (1) or (2) of this section.

Sec. 21. RCW 31.12.461 and 1997 c 397 s 40 are each amended to read as follows:

(1) For purposes of this section, the merging credit union is the credit union whose charter ceases to exist upon merger with the continuing credit union. The continuing credit union is the credit union whose charter continues upon merger with the merging credit union.

(2) A credit union may be merged with another credit union with the approval of the director and in accordance with requirements the director may prescribe. The merger must be approved by a two-thirds majority vote of the board of each credit union and a two-thirds majority vote of those members of the merging credit union voting on the merger at a membership meeting. The requirement of approval by the members of the merging credit union may be waived by the director if the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union. The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located. The notice of merger must also inform creditors of the merging credit union how to make a claim on the continuing credit union, and that if a claim is not made upon the continuing credit union within thirty days of the last date of publication, creditors' claims that are not known by the continuing credit union may be barred. ~~((Unless a))~~ Except for claims ~~((is))~~ filed as requested by the notice, or ~~((unless the))~~ debts or obligations ~~((is))~~ that are known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged. Upon merger, the charter of the merging credit union ceases to exist.

(4) Mergers are effective after the thirty-day notice period to creditors and all regulatory waiting periods have expired, and upon filing of the credit union's articles of merger by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

Sec. 22. RCW 31.12.464 and 1997 c 397 s 41 are each amended to read as follows:

(1) A credit union may merge or convert into a federal credit union as authorized by the federal credit union act. The merger or conversion must be approved by a two-thirds majority vote of those credit union members voting at a membership meeting.

(2) If the merger or conversion is approved by the members, a copy of the resolution certified by the ~~((board))~~ secretary must be filed with the director within ten days of approval. The board may effect the merger or conversion upon terms agreed by the board and the federal regulator.

(3) A certified copy of the federal credit union charter or authorization issued by the federal regulator must be filed with the director and thereupon the credit union ceases to exist except for the purpose of winding up its affairs and prosecuting or defending any litigation by or against the credit union. For all other purposes, the credit union is merged or converted into a federal credit union and the credit union may execute, acknowledge, and deliver to the successor federal credit union the instruments of transfer, conveyance, and assignment that are necessary or desirable to complete the merger or conversion, and the property, tangible or intangible, and all rights, titles, and interests that are agreed to by the board and the federal regulator.

(4) Mergers and conversions are effective after all applicable regulatory waiting periods have expired and upon filing of the credit union's articles of merger or articles of conversion, as appropriate, by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

(5) Procedures, similar to those contained in subsections (1) through ~~((3))~~ (4) of this section, prescribed by the director must be followed when a credit union merges or converts into an out-of-state or foreign credit union, or other type of financial institution.

Sec. 23. RCW 31.12.467 and 1997 c 397 s 42 are each amended to read as follows:

(1) A federal credit union located and conducting business in this state may merge or convert into a credit union organized and operating under this chapter.

(2) In the case of a conversion, the board of the federal credit union shall file with the director proposed articles of incorporation and bylaws, as provided by this chapter for organizing a new credit union. If the conversion is approved by the director, the federal credit union becomes a credit union under the laws of this state~~((, and))~~.

(3) The assets and liabilities of the federal credit union will vest in and become the property of the successor credit union subject to all existing liabilities against the federal credit union. Members of the federal credit union may become members of the successor credit union.

~~((3))~~ (4) Mergers and conversions are effective after all applicable regulatory waiting periods have expired and upon filing of the federal credit union's articles of merger or articles of conversion, as appropriate, by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

(5) Procedures, similar to those contained in subsections (1) ~~((and (2)))~~ through (4) of this section, prescribed by the director must be followed when an

out-of-state or foreign credit union wishes to merge or convert into a credit union organized and operating under this chapter.

Sec. 24. RCW 31.12.471 and 1997 c 397 s 43 are each amended to read as follows:

(1) An out-of-state or foreign credit union may not operate a branch in Washington unless:

(a) The director has approved its application ~~((to do business))~~ in ~~((this state))~~ accordance with this section;

(b) A credit union organized and operating under this chapter is permitted to do business in the state or foreign jurisdiction in which the ~~((applicant))~~ credit union is organized;

(c) The interest rate charged by the ~~((applicant))~~ credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted in the state or jurisdiction in which the ~~((applicant))~~ credit union is organized, or exceed the maximum interest rate that a credit union organized and operating under this chapter is permitted to charge on similar loans, whichever is lower;

(d) The ~~((applicant))~~ credit union has secured surety bond and fidelity bond coverages satisfactory to the director;

(e) The ~~((applicant's))~~ credit union's share and deposit accounts are insured under the federal share insurance program or an equivalent share insurance program in compliance with RCW 31.12.408;

(f) The ~~((applicant))~~ credit union submits to the director an annual examination report of its most recently completed fiscal year;

(g) The ~~((applicant))~~ credit union has not had its authority to ~~((operate))~~ do business in another state or foreign jurisdiction suspended or revoked;

(h) The credit union complies with:

(i) The provisions concerning field of membership in this chapter and rules adopted by the director; and

(ii) Such other provisions of this chapter and rules adopted by the director, as determined by the director; and

(i) In addition, if the ((applicant)) credit union is a foreign credit union:

(i) A treaty or agreement between the United States and the jurisdiction where the ~~((applicant))~~ credit union is organized requires the director to permit the ~~((applicant))~~ credit union to operate a branch in Washington; and

(ii) The director determines that the ~~((applicant))~~ credit union has substantially the same characteristics as a credit union organized and operating under this chapter~~(, and~~

~~(i) The applicant complies with all other provisions of this chapter and rules adopted by the director, except as otherwise permitted by this section).~~

(2) The director shall deny an application filed under this section or, upon notice and an opportunity for hearing, suspend or revoke the approval of an application, if the director finds that the standards of organization, operation, and

regulation of the applicant do not reasonably conform with the standards under this chapter. In considering the standards of organization, operation, and regulation of the applicant, the director may consider the laws of the state or foreign jurisdiction in which the applicant is organized. A decision under this subsection may be appealed under chapter 34.05 RCW.

(3) In implementing this section, the director may cooperate with credit union regulators in other states or jurisdictions and may share with the regulators the information received in the administration of this chapter.

(4) The director may enter into supervisory agreements with out-of-state and foreign credit unions and their regulators to prescribe the applicable laws governing the powers and authorities of Washington branches of the out-of-state or foreign credit unions. The director may also enter into supervisory agreements with the credit union regulators in other states or foreign jurisdictions to prescribe the applicable laws governing the powers and authorities of out-of-state or foreign branches and other facilities of credit unions.

The agreements may address, but are not limited to, corporate governance and operational matters. The agreements may resolve any conflict of laws, and specify the manner in which the examination, supervision, and application processes must be coordinated with the regulators.

The director may adopt rules for the periodic examination and investigation of the affairs of an out-of-state or foreign credit union operating a branch in this state. ~~((The costs of examination and supervision must be fully borne by the out-of-state or foreign credit union.))~~

Sec. 25. RCW 31.12.474 and 1997 c 397 s 44 are each amended to read as follows:

(1) At a special ~~((board))~~ meeting called for the purpose of liquidation, and upon the recommendation of at least two-thirds of the total members of the board of a credit union, the members of a credit union may elect to liquidate the credit union by a two-thirds majority vote of those members voting.

(2) Upon a vote to liquidate under subsection (1) of this section, a three-person liquidating committee must be elected to liquidate the assets of the credit union. The committee shall act in accordance with any requirements of the director and may be reasonably compensated by the board of the credit union. Each share account holder and depositor at the credit union is entitled to his, her, or its proportionate part of the assets in liquidation after all shares, deposits, and debts have been paid. The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent. The assets of the liquidating credit union are not subject to contingent liabilities. Upon distribution of the assets, the credit union ceases to exist except for the purpose of discharging existing liabilities and obligations.

(3) Funds representing unclaimed dividends in liquidation and remaining in the hands of the liquidating committee for six months after the date of the final dividend must be deposited, together with all the books and papers of the credit

union, with the director. The director may, one year after receipt, destroy such records, books, and papers as, in the director's judgment, are obsolete or unnecessary for future reference. The funds may be deposited in one or more financial institutions to the credit of the director, in trust for the members of the credit union entitled to the funds. The director may pay a portion of the funds to a person upon receipt of satisfactory evidence that the person is entitled to the funds. In case of doubt or conflicting claims, the director may require an order of the superior court of the county in which the principal place of business of the credit union was located, authorizing and directing the payment of the funds. The director may apply the interest earned by the funds toward defraying the expenses incurred in the holding and paying of the funds. Five years after the receipt of the funds, the funds still remaining with the director must be remitted to the state as unclaimed property.

Sec. 26. RCW 31.12.516 and 1997 c 397 s 45 are each amended to read as follows:

(1) The powers of supervision and examination of credit unions and other persons subject to this chapter and chapter(~~s 31.12A and~~) 31.13 RCW are vested in the director. The director shall require each credit union to conduct business in compliance with this chapter and may require each credit union to conduct business in compliance with other state and federal laws that apply to credit unions(~~(, and)~~). The director has the power to commence and prosecute actions and proceedings, to enjoin violations, and to collect sums due the state of Washington from a credit union.

(2) The director may adopt such rules as are reasonable or necessary to carry out the purposes of this chapter and chapter(~~s 31.12A and~~) 31.13 RCW. Chapter 34.05 RCW will, whenever applicable, govern the rights, remedies, and procedures respecting the administration of this chapter.

(3) The director may by rule provide appropriate relief for small credit unions from requirements under this chapter or rules of the director. However, small credit unions must still comply with RCW 31.12.408.

(4) The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter and chapter(~~s 31.12A and~~) 31.13 RCW, to facilitate the delivery of financial services to the members of a credit union.

~~((4))~~ (5) Nonfederally insured credit unions, nonfederally insured out-of-state credit unions, and nonfederally insured foreign credit unions operating in this state as permitted by RCW 31.12.408 and 31.12.471, as applicable, must comply with safety and soundness requirements established by the director.

(6) The director may charge fees to credit unions and other persons subject to examination and investigation under this chapter and chapter(~~s 31.12A and~~) 31.13 RCW, and to other parties where the division contracts out its services, in order to cover the costs of the operation of the division of credit unions, and to

establish a reasonable reserve for the division. The director may waive all or a portion of ~~((such))~~ the fees.

Sec. 27. RCW 31.12.545 and 1997 c 397 s 46 are each amended to read as follows:

(1) The director shall make an examination and investigation into the affairs of each credit union at least once every eighteen months, unless the director determines with respect to a credit union, that a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions of this chapter.

(2) In regard to credit unions, and out-of-state and foreign credit unions permitted to operate a branch in Washington pursuant to RCW 31.12.471, the director:

(a) Shall have full access to the credit union's books and records and files, including but not limited to computer files;

(b) May appraise and revalue the credit union's investments; and

(c) May require the credit union to charge off or set up a special reserve for loans and investments.

(3) The director may make an examination and investigation into the affairs of:

(a) An out-of-state or foreign credit union permitted to operate a branch in Washington pursuant to RCW 31.12.471;

(b) A nonpublicly held organization in which a credit union has a material investment;

(c) A publicly held organization the capital stock or equity of which is controlled by a credit union;

(d) A credit union service organization in which a credit union has an interest;

(e) An organization that is not a credit union, out-of-state credit union, federal credit union, or foreign credit union, and that has a majority interest in a credit union service organization in which a credit union has an interest;

(f) A sole proprietorship or organization primarily in the business of managing one or more credit unions; and

(g) A person providing electronic data processing services to a credit union. The director shall have full access to the books and records and files, including but not limited to computer files, of persons described in this subsection.

(4) In connection with examinations and investigations, the director may:

(a) Administer oaths and examine under oath any person concerning the affairs of any credit union or of any person described in subsection (3) of this section; and

(b) Issue subpoenas to and require the attendance and testimony of any person at any place within this state, and require witnesses to produce any books and records and files, including but not limited to computer files, that are material to an examination or investigation.

(5) The director may accept in lieu of an examination under ~~((subsection (1) of))~~ this section;

(a) ~~The~~ report of an examiner authorized to examine a credit union or an out-of-state, federal, or foreign credit union, or other financial institution; or

(b) ~~The~~ report of an accountant, satisfactory to the director, who has made and submitted a report of the condition of the affairs of a credit union or an out-of-state, federal, or foreign credit union, or other financial institution.

The director may accept all or part of such a report in lieu of all or part ~~((or all))~~ of an examination. ~~((If))~~ ~~The~~ ~~accepted~~~~((the))~~ report or accepted part of the report has the same force and effect as an examination under ~~((subsection (1) of))~~ this section.

Sec. 28. RCW 31.12.565 and 1997 c 397 s 48 are each amended to read as follows:

(1) The following are confidential and privileged and not subject to public disclosure under chapter 42.17 RCW:

(a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter ~~((s 31.12A and))~~ 31.13 RCW;

(b) Examination reports and related information from other financial institution regulators obtained by the director; ~~((and))~~

(c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and

(d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports prepared by the director to:

(a) Federal agencies empowered to examine credit unions or other financial institutions;

(b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union or other person examined, solely for its confidential use;

(d) The attorney general in his or her role as legal advisor to the director;

(e) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;

(f) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this

chapter, or regarding a credit union conducting business in the other state or jurisdiction;

(g) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;

(h) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, ~~((may))~~ petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish ~~((or relocate))~~ a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor.

Sec. 29. RCW 31.12.567 and 1997 c 397 s 49 are each amended to read as follows:

A credit union shall ~~((make at least two regular reports each year to the director showing the assets and liabilities of the credit union))~~ file with the director any financial and statistical report that it is required to file with the national credit union administration. Each report must be certified by the principal operating officer of the credit union. ~~((The director shall designate the form, the due dates of, and the period covered by the reports:))~~ In addition, a credit union shall file reports as may be required by the director.

Sec. 30. RCW 31.12.569 and 1997 c 397 s 50 are each amended to read as follows:

Credit unions will comply with the provisions of generally accepted accounting principles as ~~((identified by))~~ required by federal law or rule of the director. In adopting rules to implement this section, the director shall consider, among other relevant factors, whether to transition small credit unions to generally accepted accounting principles over a period of time.

Sec. 31. RCW 31.12.571 and 1997 c 397 s 51 are each amended to read as follows:

A credit union desiring to establish a branch in another state or a foreign jurisdiction shall submit to the director a notice of intent to establish ~~((a))~~ the branch at least thirty days before conducting business at the branch.

Sec. 32. RCW 31.12.575 and 1997 c 397 s 52 are each amended to read as follows:

~~((+))~~ The director may issue and serve a credit union director, supervisory committee member, officer, or employee with written notice of ~~((the director's))~~ intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the credit union or any credit union whenever, in the opinion of the director:

~~((a))~~ (1) The person has committed a material violation of law or an unsafe or unsound practice; and

~~((b)(i))~~ (2)(a) The credit union has suffered or is likely to suffer substantial financial loss or other damage; or

~~((ii))~~ (b) The interests of the credit union's share account holders and depositors could be seriously prejudiced by reason of the violation or practice; and

~~((c))~~ (3) The violation or practice involves personal dishonesty, recklessness, or incompetence.

~~((2))~~ The notice must contain a statement of the facts constituting the alleged violation or practice and must fix a time and place at which a hearing will be held to determine whether a removal or prohibition order should be issued against the person. The hearing must be set not earlier than ten days nor later than thirty days after service of the notice, unless a later date is set by the director at the request of any of the parties.

~~Unless the person appears at the hearing, the person will be deemed to have consented to the issuance of the removal or prohibition order. In the event of this consent, or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of intention has been established, the director may issue and serve upon the person an order removing the person from office at the credit union or an order prohibiting the person from participating in the conduct of the affairs of the credit union.~~

~~(3) A removal order or prohibition order becomes effective at the expiration of ten days after the service of the order upon the person, except that a removal order or prohibition order issued upon consent becomes effective at the time specified in the order. An order remains effective unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.)~~

Sec. 33. RCW 31.12.585 and 1997 c 397 s 53 are each amended to read as follows:

~~((+))~~ The director may issue and serve a credit union with a written notice of charges and intent to issue a cease and desist order if, in the opinion of the director, the credit union has committed or is about to commit:

~~((a))~~ (1) A material violation of law; or

~~((b))~~ (2) An unsafe or unsound practice.

~~((2))~~ The notice must contain a statement of the facts constituting the alleged violation or the practice and must fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the credit union. The hearing must be set not earlier than ten days nor later than thirty days after service of the notice, unless a later date is set by the director at the request of any of the parties:

~~— Unless the credit union appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent, or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the credit union an order to cease and desist from the violation or practice. The order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require the credit union to take affirmative action to correct the conditions resulting from the violation or practice.~~

~~(3) A cease and desist order becomes effective at the expiration of ten days after the service of the order upon the credit union, except that a cease and desist order issued upon consent becomes effective at the time specified in the order. The order remains effective unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.)~~ Upon taking effect, the order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

Sec. 34. RCW 31.12.595 and 1997 c 397 s 54 are each amended to read as follows:

(1) If the director determines that the violation or practice specified in RCW 31.12.585 is likely to cause an unsafe or unsound condition at the credit union, the director may issue and serve a temporary cease and desist order ~~((requiring the credit union to cease and desist from the violation or practice))~~. The order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

(2) With the temporary order, the director shall serve a notice of charges and intent to issue a cease and desist order under RCW 31.12.585 in the matter.

(3) The temporary order becomes effective upon service on the credit union and remains effective ((unless set aside, limited, or suspended by a court in proceedings under RCW 31.12.605 pending the)) until completion of the administrative proceedings under the notice ((, and until the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the credit union under RCW 31.12.585)) issued under subsection (2) of this section.

(4) Within ten days after a credit union has been served with a temporary order, the credit union may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(5) In the case of a violation or threatened violation of a temporary order, the director may apply to the superior court of the county of the principal place of business of the credit union for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

Sec. 35. RCW 31.12.625 and 1997 c 397 s 56 are each amended to read as follows:

((+)) An administrative hearing on the notice provided for in RCW 31.12.575 ((or)) and 31.12.585 must be conducted in accordance with chapter 34.05 RCW; provided that, to the extent the requirements of this chapter are inconsistent with chapter 34.05 RCW, this chapter will govern. The hearing may be held at such place as is designated by the director ((and must be conducted in accordance with chapter 34.05 RCW)). The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

((2) Within sixty days after the hearing, the director shall render a decision which includes findings of fact upon which the decision is based. The director shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 31.12.575 or 31.12.585.

—(3) Unless a petition for review is timely filed in the superior court of the county in which the principal place of business of the credit union is located, and until the record in the proceeding has been filed as provided therein, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as the director may deem proper. Upon filing the record, the director may modify, terminate, or set aside an order only with the permission of the court or the party or parties to the proceeding:

—The judicial review provided in this section will be exclusive for orders issued under RCW 31.12.575 and 31.12.585:

~~(4) Any party to the proceeding, or any person subject to an order, temporary order, or injunction issued under RCW 31.12.575, 31.12.585, 31.12.595, or 31.12.615, may obtain a review of any order issued and served under subsection (1) of this section, other than an order issued upon consent, by filing a written petition requesting that the order be modified, terminated, or set aside, in the superior court of the county in which the principal place of business of the affected credit union is located. The petition must be filed within ten days after the date of service of the order. A copy of the petition must be immediately served upon the director and the director must then file the record of the proceeding in court. The court has jurisdiction, upon the filing of the petition, to affirm, modify, terminate, or set aside, in whole or in part, the order of the director. The jurisdiction of the court becomes exclusive upon the filing of the record. However, the director may modify, terminate, or set aside the order with the permission of the court. The judgment and decree of the court is final subject to appellate review under the rules of the court.~~

~~(5) The commencement of proceedings for judicial review under subsection (4) of this section may not operate as a stay of any order issued by the director unless specifically ordered by the court.~~

~~(6) Service of any notice or order required to be served under RCW 31.12.575, 31.12.585, or 31.12.595, must be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.)~~

Sec. 36. RCW 31.13.010 and 1984 c 31 s 79 are each amended to read as follows:

~~(The terms) As used in this chapter ((shall have the following meanings)), unless the context in which ((they are)) it is used clearly indicates otherwise((:~~

~~(1) "Members" shall mean any organization which meets the requirements of chapter 31.12 RCW.~~

~~(2) "Member credit union" shall mean any credit union which has been elected to membership and subscribed for at least one share in the central credit union and paid the initial installment thereon.~~

~~(3)), the term "corporate credit union" ((shall)) or "corporate" means a ((corporation)) credit union organized under this chapter ((31.12 RCW or chartered to do business as a credit union by the administrator of the national credit union administration or the successor or successors of him.~~

~~(4) "Funds" shall mean deposits and shares of the central credit union members.~~

~~(5) For the purpose of establishing required reserves all assets except the following are "risk assets":~~

~~(a) Cash on hand;~~

~~(b) Deposits and shares in banks, trust companies, savings and loan associations, mutual savings banks or credit unions;~~

~~(c) Assets which are insured or guaranteed by, or due from, the federal government or any agency or instrumentalities thereof).~~

Sec. 37. RCW 31.13.020 and 1977 ex.s. c 207 s 1 are each amended to read as follows:

~~((A central))~~ (1) Corporate credit unions may be organized and operated under this chapter. ~~((The central))~~ A corporate credit union ~~((shall have))~~ has all the ~~((rights and))~~ powers and authorities granted in, and ~~((be))~~ is subject to, all of the provisions of chapter 31.12 RCW which are not inconsistent with this chapter. ~~((Such credit union shall))~~ A corporate must use the term "~~((central))~~ corporate" in its official name. ~~((Any central credit union in existence on September 21, 1977 in the state of Washington shall operate under the provisions of this chapter:))~~ The director may adopt rules for the organization and operation of corporate credit unions.

(2) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a corporate credit union has under the laws of this state, a corporate has the powers and authorities that a federal or Kansas state corporate credit union had on the effective date of this section. However, a corporate must still comply with RCW 31.12.408.

(3) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a corporate has under subsection (2) of this section, a corporate credit union has the powers and authorities that a federal or Kansas state corporate credit union has subsequent to the effective date of this section, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between corporate credit unions. However, a corporate must still comply with RCW 31.12.408.

(4) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or Kansas state corporate credit unions apply to corporate credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted corporate credit unions solely under this section.

(5) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters.

NEW SECTION. Sec. 38. The following acts or parts of acts are each repealed:

(1) RCW 31.12.275 (Removal of board officers by board—For cause) and 1997 c 397 s 20 & 1984 c 31 s 29;

(2) RCW 31.12.407 (Insurance required on or before December 31, 1998) and 1996 c 5 s 5;

(3) RCW 31.12.445 (Reserve requirements—Nonfederally insured credit unions) and 1997 c 397 s 38, 1994 c 92 s 199, & 1984 c 31 s 46;

(4) RCW 31.12.448 (Liquidity reserve—Special reserve fund) and 1997 c 397 s 39, 1994 c 92 s 201, & 1984 c 31 s 48;

(5) RCW 31.12.555 (Examinations by director—Consent—Frequency) and 1997 c 397 s 47;

(6) RCW 31.12.605 (Injunction setting aside, limiting, or suspending temporary cease and desist order) and 1997 c 397 s 55 & 1984 c 31 s 62;

(7) RCW 31.12.615 (Injunction to enforce temporary cease and desist order) and 1994 c 92 s 213 & 1984 c 31 s 63; and

(8) RCW 31.12.627 (Judicial enforcement of orders) and 1997 c 397 s 57.

NEW SECTION. Sec. 39. The following acts or parts of acts are each repealed:

(1) RCW 31.13.030 (Bylaws) and 1994 c 92 s 234 & 1977 ex.s. c 207 s 2;

(2) RCW 31.13.040 (Additional rights and powers) and 1977 ex.s. c 207 s 3; and

(3) RCW 31.13.050 (Reserve fund) and 1977 ex.s. c 207 s 4.

NEW SECTION. Sec. 40. RCW 31.13.900 is decodified.

NEW SECTION. Sec. 41. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 84

[Substitute House Bill 1376]

VETERANS AFFAIRS—CIVIL SERVICE EXEMPTION

AN ACT Relating to certain personnel in the department of veterans affairs; and amending RCW 41.06.077.

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

Sec. 1. RCW 41.06.077 and 1975-'76 2nd ex.s. c 115 s 7 are each amended to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of veterans affairs to the director, the deputy director, ~~((and to))~~ no more than two ~~((assistants))~~ assistant directors, a confidential secretary for the deputy director, and a confidential secretary for each assistant director.

Passed the House March 1, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 85

[Substitute House Bill 1426]

BOARDING HOMES—QUALITY IMPROVEMENT

AN ACT Relating to the establishment of a quality improvement program for boarding homes; amending RCW 18.20.115; adding a new section to chapter 18.20 RCW; and declaring an emergency.

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

Sec. 1. RCW 18.20.115 and 1997 c 392 s 213 are each amended to read as follows:

The ~~((department's system of quality improvement for long-term care services shall use))~~ department shall, within available funding for this purpose, develop and make available to boarding homes a quality improvement consultation program using the following principles ~~((consistent with applicable federal laws and regulations))~~:

(1) The system shall be resident-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for residents consistent with chapter 70.129 RCW.

(2) The goal of the system is continuous quality improvement with the focus on resident satisfaction and outcomes for residents. ~~((This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.))~~ The quality improvement consultation program shall be offered to boarding homes on a voluntary basis. Based on requests for the services of the quality improvement consultation program, the department may establish a process for prioritizing service availability.

(3) ~~((Facilities))~~ Boarding homes should be supported in their efforts to improve quality and address ~~((identified))~~ problems, as identified by the licensee, initially through training, consultation, and technical assistance. At a minimum, the department may, within available funding, at the request of the boarding home, conduct on-site visits and telephone consultations.

(4) To facilitate collaboration and trust between the boarding homes and the department's quality improvement consultation program staff, the consultation program staff shall not simultaneously serve as department licensors, complaint investigators, or participate in any enforcement-related decisions, within the region in which they perform consultation activities; except such staff may investigate on an emergency basis, complaints anywhere in the state when the complaint indicates high risk to resident health or safety. Any records or information gained as a result of their work under the quality improvement consultation program shall not be disclosed to or shared with nonmanagerial department licensing or complaint investigation staff, unless necessary to carry out duties described under chapter 74.34 RCW. The emphasis should be on problem prevention ((both in monitoring and in screening potential providers of service)). Nothing in this section shall limit or interfere with the consultant's mandated reporting duties under chapter 74.34 RCW.

~~(5) (Monitoring should be outcome based and responsive to resident complaints and a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities.~~

~~—(6) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.~~

~~—(7) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.~~

~~—(8)) The department shall promote the development of a training system that is practical and relevant to the needs of residents and staff. To improve access to training, especially for rural communities, the training system may include, but is not limited to, the use of satellite technology distance learning that is coordinated through community colleges or other appropriate organizations.~~

~~((9) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults:))~~

NEW SECTION. Sec. 2. A new section is added to chapter 18.20 RCW to read as follows:

(1) Monitoring should be outcome based and responsive to resident complaints and a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection

of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

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

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, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 86

[Second Substitute House Bill 1499]

MARINE FIN FISH AQUACULTURE

AN ACT Relating to the regulation of marine fin fish aquaculture by the department of fish and wildlife; and adding a new chapter to Title 77 RCW.

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

NEW SECTION. Sec. 1. Marine aquaculture net pen facilities in Washington state have accidentally released Atlantic salmon into Puget Sound. It is necessary to minimize escapes through the implementation of statewide prevention measures.

NEW SECTION. Sec. 2. For the purposes of this chapter, "marine aquatic farming location" means a complete complex that may be composed of various marine enclosures, net pens, or other rearing vessels, food handling facilities, or other facilities related to the rearing of Atlantic salmon or other fin fish in marine waters. A marine aquatic farming location is distinguished from the individual facilities that collectively compose the location.

NEW SECTION. Sec. 3. The director, in cooperation with the marine fin fish aquatic farmers, shall develop proposed rules for the implementation, administration, and enforcement of marine fin fish aquaculture programs. In

developing such proposed rules, the director must use a negotiated rule-making process pursuant to RCW 34.05.310. The proposed rules shall be submitted to the appropriate legislative committees by January 1, 2002, to allow for legislative review of the proposed rules. The proposed rules shall include the following elements:

- (1) Provisions for the prevention of escapes of cultured marine fin fish aquaculture products from enclosures, net pens, or other rearing vessels;
- (2) Provisions for the development and implementation of management plans to facilitate the most rapid recapture of live marine fin fish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels, and to prevent the spread or permanent escape of these products;
- (3) Provisions for the development of management practices based on the latest available science, to include:
 - (a) Procedures for inspections of marine aquatic farming locations on a regular basis to determine conformity with law and the rules of the department relating to the operation of marine aquatic farming locations; and
 - (b) Operating procedures at marine aquatic farming locations to prevent the escape of marine fin fish, to include the use of net antifoulants;
- (4) Provisions for the eradication of those cultured marine fin fish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels found spawning in state waters;
- (5) Provisions for the determination of appropriate species, stocks, and races of marine fin fish aquaculture products allowed to be cultured at specific locations and sites;
- (6) Provisions for the development of an Atlantic salmon watch program similar to the one in operation in British Columbia, Canada. The program must provide for the monitoring of escapes of Atlantic salmon from marine aquatic farming locations, monitor the occurrence of naturally produced Atlantic salmon, determine the impact of Atlantic salmon on naturally produced and cultured fin fish stocks, provide a focal point for consolidation of scientific information, and provide a forum for interaction and education of the public; and
- (7) Provisions for the development of an education program to assist marine aquatic farmers so that they operate in an environmentally sound manner.

NEW SECTION. Sec. 4. Rules to implement this act shall be adopted no sooner than thirty days following the end of the 2002 regular legislative session. The director shall provide a written report to the appropriate legislative committees by January 1, 2003, on the progress of the program.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act constitute a new chapter in Title 77 RCW.

Passed the House March 12, 2001.
 Passed the Senate April 6, 2001.
 Approved by the Governor April 19, 2001.
 Filed in Office of Secretary of State April 19, 2001.

CHAPTER 87

[House Bill 1542]

PUBLIC DISCLOSURE—COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

AN ACT Relating to exempting financial or proprietary information provided to the department of community, trade, and economic development 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 1999 c 150 s 1 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, 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~~) is exempt from disclosure under this chapter:

(a) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

(b) Financial or proprietary information(()) collected from any person and provided to the department or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business 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) Any work product developed by the department based on information as described in subsection (1)(a) of this section is not exempt from disclosure.

(3) For the purposes of this section, "siting decision" means the decision to acquire or not to acquire a site.

~~((3))~~ (4) 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))~~ (5) Nothing in this section shall apply to records of any other state agency or of a local agency.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 88

[Second Substitute House Bill 1590]

BREASTFEEDING

AN ACT Relating to breastfeeding; amending RCW 9A.88.010; and adding new sections to chapter 43.70 RCW

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.70 RCW to read as follows:

(1) The legislature acknowledges the surgeon general's summons to all sectors of society and government to help redress the low breastfeeding rates and duration in the United States, including the social and workplace factors that can make it difficult for women to breastfeed. The legislature also acknowledges the surgeon general's report on the health and economic importance of breastfeeding which concludes that:

- (a) Breastfeeding is one of the most important contributors to infant health;
- (b) Breastfeeding provides a range of benefits for the infant's growth, immunity, and development; and
- (c) Breastfeeding improves maternal health and contributes economic benefits to the family, health care system, and workplace.

(2) The legislature declares that the achievement of optimal infant and child health, growth, and development requires protection and support for the practice of breastfeeding. The legislature finds that:

(a) The American academy of pediatrics recommends exclusive breastfeeding for the first six months of a child's life and breastfeeding with the addition of solid foods to continue for at least twelve months, and that arrangements be made to provide expressed breast milk if the mother and child must separate during the first year. Children should be breastfed or fed expressed breast milk when they show signs of need, rather than according to a set schedule or the location;

(b) Breast milk contains all the nutrients a child needs for optimal health, growth, and development, many of which can only be found in breast milk;

(c) Research in developed countries provides strong evidence that breastfeeding decreases the incidence and/or severity of diarrhea, lower respiratory tract infection, otitis media, bacteremia, bacterial meningitis, urinary tract infection, and necrotizing enterocolitis. In addition, a number of studies show a possible protective effect of breastfeeding against SIDS, Type I diabetes mellitus, Crohn's disease, lymphoma, ulcerative colitis, and allergic diseases;

(d) Studies also indicate health benefits in mothers who breastfeed. Breastfeeding is one of the few ways that mothers may be able to lower their risk

of developing breast and ovarian cancer, with benefits proportional to the duration that they are able to breastfeed. In addition, the maternal hormonal changes stimulated by breastfeeding also help the uterus recover faster and minimize the amount of blood mothers lose after birth. Breastfeeding inhibits ovulation and menstrual bleeding, thereby decreasing the risk of anemia and a precipitous subsequent pregnancy. Breastfeeding women also have an earlier return to prepregnancy weight;

(e) Approximately two-thirds of women who are employed when they become pregnant return to the work force by the time their children are six months old;

(f) Employers benefit when their employees breastfeed. Breastfed infants are sick less often; therefore, maternal absenteeism from work is lower in companies with established lactation programs. In addition, employee medical costs are lower and employee productivity is higher;

(g) According to a survey of mothers in Washington, most want to breastfeed but discontinue sooner than they hope, citing lack of societal and workplace support as key factors limiting their ability to breastfeed;

(h) Many mothers fear that they are not making enough breastmilk and therefore decrease or discontinue breastfeeding. Frequency of breastfeeding or expressing breast milk is the main regulator of milk supply, such that forcing mothers to go prolonged periods without breastfeeding or expressing breast milk can undermine their ability to maintain breastfeeding; and

(i) Maternal stress can physiologically inhibit a mother's ability to produce and let down milk. Mothers report modifiable sources of stress related to breastfeeding, including lack of protection from harassment and difficulty finding time and an appropriate location to express milk while away from their babies.

(3) The legislature encourages state and local governmental agencies, and private and public sector businesses to consider the benefits of providing convenient, sanitary, safe, and private rooms for mothers to express breast milk.

Sec. 2. RCW 9A.88.010 and 1990 c 3 s 904 are each amended to read as follows:

(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2) Indecent exposure is a misdemeanor unless such person exposes himself or herself to a person under the age of fourteen years in which case indecent exposure is a gross misdemeanor on the first offense and, if such person has previously been convicted under this subsection or of a sex offense as defined in RCW 9.94A.030, then such person is guilty of a class C felony punishable under chapter 9A.20 RCW.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70 RCW to read as follows:

(1) An employer may use the designation "infant-friendly" on its promotional materials if the employer has an approved workplace breastfeeding policy addressing at least the following:

(a) Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk;

(b) A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk;

(c) A convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location specified in (b) of this subsection; and

(d) A convenient hygienic refrigerator in the workplace for the mother's breast milk.

(2) Employers seeking approval of a workplace breastfeeding policy must submit the policy to the department of health. The department of health shall review and approve those policies that meet the requirements of this section. The department may directly develop and implement the criteria for "infant-friendly" employers, or contract with a vendor for this purpose.

(3) For the purposes of this section, "employer" includes those employers defined in RCW 49.12.005 and also includes the state, state institutions, state agencies, political subdivisions of the state, and municipal corporations or quasi-municipal corporations.

Passed the House March 14, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 89

[Substitute House Bill 1596]

SPECIAL NEEDS TRANSPORTATION

AN ACT Relating to transportation of persons with special needs; amending RCW 82.14.045; adding a new section to chapter 36.57 RCW; and adding a new section to chapter 36.57A RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 36.57 RCW to read as follows:

(1) Effective January 1, 2001, in addition to any other authority granted under this chapter, a county transportation authority may be created to purchase, acquire, maintain, operate, or lease transportation services, equipment, and facilities for public transportation limited only to persons with special needs by any method or combination of methods provided by the authority.

(2) As used in this section, "persons with special needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(3) The county transportation authority may fix, regulate, and control fares and rates to be charged for these transportation services.

NEW SECTION. Sec. 2. A new section is added to chapter 36.57A RCW to read as follows:

(1) Effective January 1, 2001, in addition to any other authority granted under this chapter, a newly formed public transportation benefit area, or an existing public transportation benefit area that has not yet successfully submitted an authorizing proposition to the voters under RCW 82.14.045, may purchase, acquire, maintain, operate, or lease transportation services, equipment, and facilities for public transportation limited only to persons with special needs by any method or combination of methods provided by the area authority.

(2) As used in this section, "persons with special needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(3) The public transportation benefit area may fix, regulate, and control fares and rates to be charged for these transportation services.

Sec. 3. RCW 82.14.045 and 2000 2nd sp.s. c 4 s 16 are each amended to read as follows:

(1) The legislative body of any city pursuant to RCW 35.92.060, of any county which has created an unincorporated transportation benefit area pursuant to RCW 36.57.100 and 36.57.110, of any public transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090, of any county transportation authority established pursuant to chapter 36.57 RCW, and of any metropolitan municipal corporation within a county with a population of one million or more pursuant to chapter 35.58 RCW, may, by resolution or ordinance for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems or public transportation limited to persons with special needs under sections 1 and 2 of this act, and in lieu of the excise taxes authorized by RCW 35.95.040, submit an authorizing proposition to the voters or include such authorization in a proposition to perform the function of public transportation or public transportation limited to persons with special needs under sections 1 and 2 of this act, and if approved by a majority of persons voting thereon, fix and impose a sales and use tax in accordance with the terms of this chapter: PROVIDED, That no such legislative body shall impose such a sales and use tax without submitting such an authorizing proposition to the voters and obtaining the approval of a majority of persons voting thereon: PROVIDED FURTHER, That where such a proposition is submitted by a county on behalf of an unincorporated transportation benefit area, it shall be voted upon by the voters residing within the boundaries of such unincorporated transportation benefit area and, if approved, the sales and use tax shall be imposed only within such area. Notwithstanding any provisions of this section to the contrary, any county in which a county public transportation plan has been adopted pursuant to RCW 36.57.070 and the voters of such county have authorized the imposition of a sales and use tax

pursuant to the provisions of section 10, chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be authorized to fix and impose a sales and use tax as provided in this section at not to exceed the rate so authorized without additional approval of the voters of such county as otherwise required by this section.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, public transportation benefit area, county, or metropolitan municipal corporation as the case may be. The rate of such tax shall be one-tenth, two-tenths, three-tenths, four-tenths, five-tenths, six-tenths, seven-tenths, eight-tenths, or nine-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). The rate of such tax shall not exceed the rate authorized by the voters unless such increase shall be similarly approved.

(2)(a) In the event a metropolitan municipal corporation shall impose a sales and use tax pursuant to this chapter no city, county which has created an unincorporated transportation benefit area, public transportation benefit area authority, or county transportation authority wholly within such metropolitan municipal corporation shall be empowered to levy and/or collect taxes pursuant to RCW 35.58.273, 35.95.040, and/or 82.14.045, but nothing herein shall prevent such city or county from imposing sales and use taxes pursuant to any other authorization.

(b) In the event a county transportation authority shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, public transportation benefit area, or metropolitan municipal corporation, located within the territory of the authority, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(c) In the event a public transportation benefit area shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, or metropolitan municipal corporation, located wholly or partly within the territory of the public transportation benefit area, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(3) Any local sales and use tax revenue collected pursuant to this section by any city or by any county for transportation purposes pursuant to RCW 36.57.100 and 36.57.110 shall not be counted as locally generated tax revenues for the purposes of apportionment and distribution, in the manner prescribed by chapter 82.44 RCW, of the proceeds of the motor vehicle excise tax authorized pursuant to RCW 35.58.273, except that the local sales and use tax revenue collected under this section by a city with a population greater than sixty thousand that as of January 1, 1998, owns and operates a municipal public transportation system shall be counted as locally generated tax revenues for the purposes of apportionment and

distribution, in the manner prescribed by chapter 82.44 RCW, of the proceeds of the motor vehicle excise tax authorized under RCW 35.58.273 as follows:

(a) For fiscal year 2000, revenues collected under this section shall be counted as locally generated tax revenues for up to 25 percent of the tax collected under RCW 35.58.273;

(b) For fiscal year 2001, revenues collected under this section shall be counted as locally generated tax revenues for up to 50 percent of the tax collected under RCW 35.58.273;

(c) For fiscal year 2002, revenues collected under this section shall be counted as locally generated tax revenues for up to 75 percent of the tax collected under RCW 35.58.273; and

(d) For fiscal year 2003 and thereafter, revenues collected under this section shall be counted as locally generated tax revenues for up to 100 percent of the tax collected under RCW 35.58.273.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 90

[House Bill 1727]

INSURERS—INVESTMENT LIMITS

AN ACT Relating to the investment limits of insurers in noninsurance subsidiaries; and adding a new section to chapter 48.13 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.13 RCW to read as follows:

(1) Notwithstanding RCW 48.13.220 and 48.13.240, an insurer may not loan or invest its funds in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries in an aggregate amount exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus as regards policyholders. In calculating the amount of investments under this section, investments in domestic or foreign subsidiary insurers, health care service contractors, and health maintenance organizations are excluded.

(2) For the purposes of this section, "subsidiary" has the same meaning as in RCW 48.31B.005.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 91

[House Bill 1729]

SURPLUS LINE BROKERS

AN ACT Relating to licensing surplus line brokers; and adding a new section to chapter 48.15 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.15 RCW to read as follows:

(1) The commissioner may license as a surplus line broker a person who is otherwise qualified under this code but who is not a resident of this state, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of this state.

(2) A person under subsection (1) of this section must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under this chapter. A person granted a nonresident surplus line broker's license must have all the same responsibilities as any other surplus line broker and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 92

[House Bill 1780]

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 1999 c 47 s 1 are each amended to read as follows:

The district manager for district two as defined in WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the 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, (~~2001~~) **2003**, any unexpended portion of the two hundred thousand dollars shall be returned to the 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, 2001.

Passed the House March 9, 2001.
Passed the Senate April 6, 2001.
Approved by the Governor April 19, 2001.
Filed in Office of Secretary of State April 19, 2001.

CHAPTER 93

[Substitute Senate Bill 6020]

DENTAL CARE—SEALANT PROGRAMS

AN ACT Relating to access to dental care; adding a new section to chapter 43.70 RCW; adding a new section to chapter 18.29 RCW; adding a new section to chapter 18.32 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that access to preventive and restorative oral health services by low-income children is currently restricted by complex regulatory, financial, cultural, and geographic barriers that have resulted in a large number of children suffering unnecessarily from dental disease. The legislature also finds that very early exposure to oral health care can reverse this disease in many cases, thereby significantly reducing costs of providing dental services to low-income populations.

It is the intent of the legislature to address the problem of poor access to oral health care by providing for school-based sealant programs through the endorsement of dental hygienists.

NEW SECTION. Sec. 2. A new section is added to chapter 43.70 RCW to read as follows:

The secretary is authorized to create a school sealant endorsement program for dental hygienists and dental assistants. The secretary of health, in consultation with the dental quality assurance commission and the dental hygiene examining committee, shall adopt rules to implement this section.

(1) A dental hygienist licensed in this state after the effective date of this act is eligible to apply for endorsement by the department of health as a school sealant dental hygienist upon completion of the Washington state school sealant endorsement program. While otherwise authorized to act, currently licensed hygienists may still elect to apply for the endorsement.

(2) A dental assistant employed after the effective date of this act by a dentist licensed in this state, who has worked under dental supervision for at least two hundred hours, is eligible to apply for endorsement by the department of health as a school sealant dental assistant upon completion of the Washington state school sealant endorsement program. While otherwise authorized to act, currently employed dental assistants may still elect to apply for the endorsement.

(3) The department may impose a fee for implementation of this section.

(4) The secretary shall provide a report to the legislature by December 1, 2005, evaluating the outcome of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 18.29 RCW to read as follows:

(1) For low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, a dental hygienist licensed in this state as of the effective date of this act may assess for and apply sealants and apply fluoride varnishes in community-based sealant programs carried out in schools without attending the department's school sealant endorsement program.

(2) For low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, dental hygienists who are school sealant endorsed under section 2 of this act may assess for and apply sealants and fluoride varnishes in community-based sealant programs carried out in schools.

NEW SECTION. Sec. 4. A new section is added to chapter 18.32 RCW to read as follows:

(1) For low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, a dental assistant working as of the effective date of this act under the supervision of a licensed dentist may apply sealants and fluoride varnishes under the general supervision of a dentist in community-based sealant programs carried out in schools without attending the department's school sealant endorsement program.

(2) For low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, dental assistants who are school sealant endorsed under section 2 of this act may apply sealants and fluoride varnishes under the general supervision of a dentist in community-based sealant programs carried out in schools.

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 12, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 94

[Engrossed Substitute Senate Bill 5970]

PROBATION ORDERS

AN ACT Relating to probation orders; and amending RCW 3.66.067, 3.66.068, 35.20.255, 3.50.320, and 3.50.330.

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

Sec. 1. RCW 3.66.067 and 1984 c 258 s 46 are each amended to read as follows:

After a conviction, the court may (~~defer sentencing~~) impose sentence by suspending all or a portion of the defendant's sentence or by deferring the sentence of the defendant and may place the defendant on probation for a period of no longer than two years and prescribe the conditions thereof(~~, but in no case shall it extend for more than two years from the date of conviction~~). A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty and to enter a plea of not guilty, and the court may dismiss the charges.

Sec. 2. RCW 3.66.068 and 1999 c 56 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 or defer the execution of all or any part of its sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. 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 1999 c 56 s 3 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 including installment payment of fines, 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. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating

probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence.

Sec. 4. RCW 3.50.320 and 1984 c 258 s 116 are each amended to read as follows:

After a conviction, the court may ~~((defer sentencing))~~ impose sentence by suspending all or a portion of the defendant's sentence or by deferring the sentence of the defendant and may place the defendant on probation for a period of no longer than two years and prescribe the conditions thereof ~~((but in no case shall it extend for more than two years from the date of conviction))~~. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges.

Sec. 5. RCW 3.50.330 and 1999 c 56 s 1 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 or defer the execution of all or any part of the sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence.

Passed the Senate March 14, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 95

[Substitute Senate Bill 5014]

SEX AND KIDNAPPING OFFENDERS

AN ACT Relating to harmonizing the definitions of sex and kidnapping offenders under the criminal and registration statutes; amending RCW 9.94A.030 and 9A.44.130; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 9.94A.030 and 2000 c 28 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) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.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 offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670, 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department. 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.715, as established by the commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

(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 release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(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. 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.

(9) "Confinement" means total or partial confinement.

(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.

(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 court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(14) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(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 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 offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(18) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(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.

(20) "Earned release" means earned release from confinement as provided in RCW 9.94A.150.

(21) "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.

(22) "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.

(23) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(24) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(25) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(26) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of

intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(27) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

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

(s) Any other class B felony offense with a finding of sexual motivation;

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

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

(29) "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.

(30) "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.

(31) "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 (31)(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 (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

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

(33) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(34) "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.

(35) "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.

(36) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

(37) "Sex offense" means:

(a)(i) A felony that is a violation of

(i) chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) ((RCW 9.68A.090) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

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

(38) "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.

(39) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(40) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(41) "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.

(42) "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.

(43) "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.

(44) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault; and

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

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

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

(45) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.135.

(46) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 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.

(47) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 2. RCW 9A.44.130 and 2000 c 91 s 2 are each amended to read as follows:

(1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the

institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) **OFFENDERS IN CUSTODY.** (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is

to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) **OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make

reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a *per se* violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice

of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within fourteen days after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report in person to the sheriff of the county where he or she is registered. If he or she has been classified as a risk level I sex or kidnapping offender, he or she must report monthly. If he or she has been classified as a risk level II or III sex or kidnapping offender, he or she must report weekly. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within fourteen days after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall

submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

(i) Any offense defined as a sex offense by RCW 9.94A.030 ((and any violation of RCW 9.68A.040 (sexual exploitation of a minor), 9.68A.050 (dealing in depictions of minor engaged in sexually explicit conduct), 9.68A.060 (sending, bringing into state depictions of minor engaged in sexually explicit conduct), 9.68A.090 (communication with minor for immoral purposes), 9.68A.100 (patronizing juvenile prostitute), or));

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree)((, as well as));

(iii) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(iv) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

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, 2001.

Passed the Senate March 8, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 96

[Engrossed Substitute Senate Bill 5017]

METHAMPHETAMINE—PRECURSOR DRUG SALES LIMITS

AN ACT Relating to precursor drugs; amending RCW 69.43.010, 69.43.020, 69.43.040, and 69.43.090; adding new sections to chapter 69.43 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. Communities all over the state of Washington have experienced an increase in the illegal manufacture of methamphetamine. Illegal methamphetamine labs create a significant threat to the health and safety of the people of the state. Some of the chemicals and compounds used to make methamphetamine, and the toxic wastes the process generates, are hazards to the

public health. Increases in crime, violence, and the abuse and neglect of children present at laboratory sites are also associated with the increasing number of illegal laboratory sites. The drugs ephedrine, pseudoephedrine, and phenylpropanolamine, which are used in the illegal manufacture of methamphetamine, have been identified as factors in the increase in the number of illegal methamphetamine labs. Therefore, it is the intent of the legislature to place restrictions on the sale and possession of those three drugs in order to reduce the proliferation of illegal methamphetamine laboratories and the associated threats to public health and safety.

Sec. 2. RCW 69.43.010 and 1998 c 245 s 107 are each amended to read as follows:

(1) ~~((Beginning July 1, 1988.))~~ A report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to any person ~~((in this state))~~ any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) ~~((Methylformamide))~~ Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

- (a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;
- (b) The availability of the substance;
- (c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and
- (d) The extent and nature of legitimate uses for the substance.

(3)(a) ~~((Beginning on July 1, 1988,))~~ Any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to ~~((a))~~ any person ~~((in this state)),~~ require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means ~~((in the case of a face-to-face purchase,))~~;

(i) A motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number ~~((;))~~;

(ii) The motor vehicle license number of any motor vehicle owned or operated by the purchaser ~~((;))~~;

(iii) A letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business ~~((;))~~;

(iv) A description of how the substance is to be used ~~((;))~~; and

(v) The signature of the purchaser.

The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser. ~~((The state board of pharmacy shall provide by rule for the proper identification of purchasers in other than face-to-face purchases.))~~

(c) A violation of or a failure to comply with this subsection is a misdemeanor.

(4) ~~((Beginning on July 1, 1988,))~~ Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to ~~((a))~~ any person ~~((in this state))~~ shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by ~~((that))~~ subsection (4) of this section is guilty of a gross misdemeanor.

Sec. 3. RCW 69.43.020 and 1988 c 147 s 2 are each amended to read as follows:

(1) ~~((Beginning on July 1, 1988,))~~ Any manufacturer, wholesaler, retailer, or other person ~~((subject to any other reporting requirements in this chapter,))~~ who receives from a source outside of this state any substance specified in RCW 69.43.010(1)(~~(:)~~) shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

NEW SECTION. **Sec. 4.** A new section is added to chapter 69.43 RCW to read as follows:

(1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the state board of pharmacy.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The state board of pharmacy shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

NEW SECTION. **Sec. 5.** A new section is added to chapter 69.43 RCW to read as follows:

(1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person shall maintain a record of each such sale or transfer. The records must contain:

- (a) The name of the substance;
- (b) The quantity of the substance sold, transferred, or furnished;
- (c) The date the substance was sold, transferred, or furnished;
- (d) The name and address of the person buying or receiving the substance; and
- (e) The method of and amount of payment for the substance.

(2) The records of sales and transfers required by this section shall be available for inspection by the state board of pharmacy and its authorized representatives and shall be maintained for two years.

- (3) A violation of this section is a gross misdemeanor.

NEW SECTION. Sec. 6. A new section is added to chapter 69.43 RCW to read as follows:

A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) and who is subject to the reporting or recordkeeping requirements of this chapter may satisfy the requirements by submitting to the state board of pharmacy, and its authorized representatives:

(1) Computer readable data from which all of the required information may be readily derived; or

(2) Copies of reports that are filed under federal law that contain all of the information required by the particular reporting or recordkeeping requirement of this chapter which it is submitted to satisfy.

Sec. 7. RCW 69.43.040 and 1989 1st ex.s. c 9 s 441 are each amended to read as follows:

(1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

- (a) Name of the substance;
- (b) Quantity of the substance sold, transferred, or furnished;
- (c) The date the substance was sold, transferred, or furnished;
- (d) The name and address of the person buying or receiving the substance; and
- (e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under ~~((subsection (1)(c) of this section))~~ RCW 69.43.010(4) may be computer-generated in accordance with rules adopted by the department.

Sec. 8. RCW 69.43.090 and 1989 1st ex.s. c 9 s 443 are each amended to read as follows:

(1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to ~~((a))~~ any person ((in this state)) or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale,

transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor.

NEW SECTION. Sec. 9. A new section is added to chapter 69.43 RCW to read as follows:

(1) It is unlawful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, knowingly to sell, transfer, or to otherwise furnish, in a single transaction:

(a) More than three packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(b) A single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire, in any twenty-four hour period, more than the quantities of the substances specified in subsection (1) of this section.

(3) A violation of this section is a gross misdemeanor.

NEW SECTION. Sec. 10. A new section is added to chapter 69.43 RCW to read as follows:

(1) Any person who possesses more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of those substances, is guilty of a gross misdemeanor.

(2) This section does not apply to any of the following:

(a) A pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers upon the prescription of a practitioner, as defined in RCW 69.41.010;

(b) A practitioner who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers to his or her patients;

(c) A pharmacy, manufacturer, or wholesaler licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW;

(d) A person in the course of his or her business of selling, transporting, or storing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, for a person described in (a), (b), or (c) of this subsection; or

(e) A person in possession of more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers in their home or residence under circumstances consistent with typical medicinal or household use as indicated by, but not limited to, storage location and possession of products in a variety of strengths, brands, types, purposes, and expiration dates.

NEW SECTION. Sec. 11. A new section is added to chapter 69.43 RCW to read as follows:

Sections 9 and 10 of this act do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce; or

(3) Products that the state board of pharmacy, upon application of a manufacturer, exempts by rule from sections 9 and 10 of this act because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

NEW SECTION. Sec. 12. A new section is added to chapter 69.43 RCW to read as follows:

(1) In addition to the other penalties provided for in this chapter or in chapter 18.64 RCW, the state board of pharmacy may impose a civil penalty, not to exceed ten thousand dollars for each violation, on any licensee or registrant who has failed to comply with this chapter or the rules adopted under this chapter. In the case of

a continuing violation, every day the violation continues shall be considered a separate violation.

(2) The state board of pharmacy may waive the suspension or revocation of a license or registration issued under chapter 18.64 RCW, or waive any civil penalty under this chapter, if the licensee or registrant establishes that he or she acted in good faith to prevent violations of this chapter, and the violation occurred despite the licensee's or registrant's exercise of due diligence. In making such a determination, the state board of pharmacy may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish substances specified in RCW 69.43.010(1) in accordance with applicable laws.

NEW SECTION. Sec. 13. A new section is added to chapter 69.43 RCW to read as follows:

This chapter is applicable and uniform throughout this state and in all counties, cities, code cities, and towns therein. A county, city, code city, or town may not adopt or enforce any ordinance, pertaining to this chapter, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those provided under this chapter. However, this section does not preclude a county, city, code city, or town from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter.

NEW SECTION. Sec. 14. A new section is added to chapter 69.43 RCW to read as follows:

(1) To prevent violations of section 9 of this act, every licensee and registrant under chapter 18.64 RCW, who sells at retail any products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall do either or may do both of the following:

(a) Program scanners, cash registers, or other electronic devices used to record sales in a manner that will alert persons handling transactions to potential violations of section 9(1) of this act and/or prevent such violations; or

(b) Place one or more signs on the premises to notify customers of the prohibitions of section 9 of this act. Any such sign may, but is not required to, conform to the language and format prepared by the department of health under subsection (2) of this section.

(2) The department of health shall prepare language and format for a sign summarizing the prohibitions in sections 9 and 10 of this act and make the language and format available to licensees and registrants under chapter 18.64 RCW, for voluntary use in their places of business to inform customers and employees of the prohibitions. Nothing in this section requires the department of health to provide licensees or registrants with copies of signs, or any licensee or registrant to use the specific language or format prepared by the department under this subsection.

NEW SECTION. Sec. 15. 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 6, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 97

[Senate Bill 5108]

SHORT-ROTATION HARDWOOD TREES

AN ACT Relating to the growing of short-rotation hardwood trees on agricultural land; and amending RCW 84.33.035, 76.09.020, and 82.04.213.

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

Sec. 1. RCW 84.33.035 and 1995 c 165 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) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(3) "Forest land" means forest land which is classified or designated forest land under this chapter.

(4) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department of revenue.

(5) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use: PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and

institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(6) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than ~~((ten))~~ fifteen years.

(7) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean that actual amount paid to the seller in cash or other consideration. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(8) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

(9) "Timber assessed value" for a county means a value, calculated by the department of revenue before October 1 of each year, equal to the total stumpage value of timber harvested from privately owned land in the county during the most recent four calendar quarters for which the information is available multiplied by a ratio. The numerator of the ratio is the rate of tax imposed by the county under RCW 84.33.051 for the year of the calculation. The denominator of the ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value.

(10) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated.

Sec. 2. RCW 76.09.020 and 1999 sp.s. c 4 s 301 are each amended to read as follows:

For purposes of this chapter:

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

(3) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the

Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(4) "Commissioner" means the commissioner of public lands.

(5) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(6) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(7) "Department" means the department of natural resources.

(8) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

(9) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: PROVIDED, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(10) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(11) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(12) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on

land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees.

~~(13)~~ (13) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

~~((+3))~~ (14) "Application" means the application required pursuant to RCW 76.09.050.

~~((+4))~~ (15) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

~~((+5))~~ (16) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

~~((+6))~~ (17) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

~~((+7))~~ (18) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees.

~~((+8))~~ (19) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

~~((+9))~~ (20) "Board" means the forest practices board created in RCW 76.09.030.

~~((20))~~ (21) "Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

~~((21))~~ (22) "Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

Sec. 3. RCW 82.04.213 and 1993 sp.s. c 25 s 302 are each amended to read as follows:

(1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets.

(2) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

Passed the Senate March 6, 2001.

Passed the House April 11, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 98

[Substitute Senate Bill 5255]

PUBLIC DISCLOSURE—TERRORISM

AN ACT Relating to the public disclosure of specific and unique information related to criminal acts of terrorism; reenacting and amending RCW 42.17.310; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure.

Sec. 2. RCW 42.17.310 and 2000 c 134 s 3, 2000 c 56 s 1, and 2000 c 6 s 5 are each reenacted and amended to read as follows:

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

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

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

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 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, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(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 18.130.040 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 or

70.41.200, or by a peer review committee under RCW 4.24.250, 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.

(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.

(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.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers supplied to an agency for the purpose of electronic transfer of funds, except when disclosure is expressly required by law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, the public disclosure of which would have a substantial likelihood of threatening public safety.

(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.

Passed the Senate March 13, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 99

[Senate Bill 5316]

EDUCATIONAL INSTITUTIONS—EMPLOYMENT

AN ACT Relating to reasonable assurance of employment for employees of educational institutions; amending RCW 50.44.053 and 50.44.080; adding a new section to chapter 50.44 RCW; creating new sections; 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 50.44 RCW to read as follows:

The legislature finds the interests of the state and its citizens are best served by a strong community and technical college system. As described by their establishing legislation, these two-year institutions are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher education. Paramount to that system's success is the attraction and retention of qualified instructors. In order to attract and retain instructors, those who are subject to uncertainties of employment must be provided assurance their economic needs are addressed. Over time, a change in hiring patterns has occurred, and for the last decade a substantial portion of community and technical college faculty are hired on a contingent, as needed, basis. That contingent nature distinguishes them from the more stable, majority employment found in the common school system and in the other institutions of higher education. Contingent assurances of future employment are often speculative and do not rise to the level of other forms of assurance. As such, assurances conditioned on forecast enrollment, funding, or program decisions are typically not reasonable assurances of employment.

It is the intent of the legislature that reasonable assurance continue to apply to all employees of educational institutions as required by federal provisions and RCW 50.44.080.

Sec. 2. RCW 50.44.053 and 1998 c 233 s 3 are each amended to read as follows:

(1) The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic

year or term. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

(2) An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

(3) In the case of community and technical colleges assigned the standard industrial classification code 8222 or the north American industry classification system code 611210 for services performed in a principal administrative, research, or instructional capacity, a person is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. It is the college's burden to provide sufficient documentation to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes.

Sec. 3. RCW 50.44.080 and 1971 c 3 s 25 are each amended to read as follows:

~~((RCW 50.44.010 through 50.44.070 have been enacted to meet the requirements imposed by the federal unemployment tax act as amended by 91-373. Internal references in any section of chapter 3, Laws of 1971 to the provisions of that act are intended only to apply to those provisions as they existed as of January 28, 1971.))~~

In view of the importance of compliance of this chapter ~~((3, Laws of 1971))~~ with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. ~~((Considerable weight has been given to the commentary contained in that document entitled "Draft Legislation to Implement the Employment Security Amendments of 1970 . . . H.R. 14705", published by the United States Department of Labor, Manpower Administration, and that commentary should be referred to when interpreting the provisions of chapter 3, Laws of 1971.))~~ Department of labor guidelines implementing this act should be referred to when interpreting the provisions of this chapter.

Language in this chapter ~~((3, Laws of 1971))~~ concerning the extension of coverage to employers entitled to make payments in lieu of contributions should, in a manner consistent with the foregoing paragraph, be construed so as to have a minimum financial impact on the employers subject to the experience rating provisions of this title.

NEW SECTION. Sec. 4. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the

extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

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

NEW SECTION. Sec. 6. This act applies to weeks that begin after March 31, 2001.

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 March 10, 2001.

Passed the House April 11, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 100

[Senate Bill 5317]

EDUCATION EMPLOYEES—UNEMPLOYMENT COMPENSATION

AN ACT Relating to use of school hours and wages for unemployment compensation claims for educational employees; amending RCW 50.44.050; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to clarify requirements related to the use of base year hours and wages for certain employees at educational institutions, for the purpose of determining eligibility for unemployment insurance benefits.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which poses a significant economic risk to the state's private employers, the state's general fund, and to the administration of the state's unemployment insurance system. It is the intent of the legislature to change Washington's unemployment law only to the extent necessary to ensure it conforms with federal law governing the use of base year hours and wages earned at educational institutions.

The legislature finds that the United States department of labor will rely on state law and its application as interpreted in state court decisions, especially *Pechman v. Employment Security*, to determine if Washington state law conforms to federal guidelines in this area. Therefore, it is the intent of the legislature to clearly communicate to the courts that the purpose for the section 2, chapter . . . ,

Laws of 2001 amendment to RCW 50.44.050 (section 2 of this act) is to interpret state law in a manner that conforms to federal guidelines.

The legislature finds that federal law requires that school hours and wages in the base year must be restricted from use to establish eligibility for an unemployment compensation claim for employees of educational institutions during specified times. Further, federal law specifies that when required to restrict base year school hours and wages, it must be any and all hours and wages from any and all educational institutions, not just the hours and wages from institutions where there is a reasonable assurance of returning to work following a customary nonwork period. Therefore, it is the intent of the legislature to restrict hours worked and wages earned as required by federal law.

Customary nonwork periods for educational institutions include:

- (1) The period between two successive academic years;
- (2) The period between two successive academic terms within an academic year;
- (3) A similar period between two regular but not successive terms within an academic year; or
- (4) An established and customary vacation period or holiday recess.

Restricted use of base year hours and wages from educational institutions shall occur only in the circumstances described in RCW 50.44.050 (as amended by this act) and in RCW 50.44.053, and as further defined in rules promulgated by the employment security department.

Sec. 2. RCW 50.44.050 and 1998 c 233 s 2 are each amended to read as follows:

Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on any and all service in an instructional, research, or principal administrative capacity for ~~((an))~~ any and all educational institutions shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on any and all services in any other capacity for ~~((an))~~ any and all educational institutions for any week of

unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services for any educational institution in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services for any educational institution in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in ~~((an))~~ any educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in this section, "academic year" means: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution.

NEW SECTION. Sec. 3. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 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 10, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 101

[Senate Bill 5359]

HEALTH PROFESSIONS—PRO TEM BOARD MEMBERS

AN ACT Relating to the health professions' use of pro tem board members; and amending RCW 18.130.060.

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

Sec. 1. RCW 18.130.060 and 1995 c 336 s 5 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint ~~((not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with))~~ pro tem members to participate as members of a panel of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. Pro tem members appointed for matters under this chapter are appointed for a term of no more than one year. No pro tem member may serve more than four one-year terms. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board. The chairperson of a ~~((committee))~~ panel shall be a regular member of the board appointed by the board chairperson. ~~((Committees))~~ Panels have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through ~~((committees))~~ panels does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board ~~((committees))~~ panels may make interim orders and issue final decisions with respect to matters and cases delegated to the ~~((committee))~~ panel by the board. Final decisions may be appealed as provided in chapter 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant

to law by the governor or the secretary to the boards and commissions specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a).

Passed the Senate March 10, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 102

[Substitute Senate Bill 5497]

FOREST PRACTICES ACT—FARM LAND

AN ACT Relating to excluding farm and agricultural land from forest land under the forest practices act; and amending RCW 76.09.020.

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

Sec. 1. RCW 76.09.020 and 1999 sp.s. c 4 s 301 are each amended to read as follows:

For purposes of this chapter:

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

(3) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dumni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(4) "Commissioner" means the commissioner of public lands.

(5) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(6) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(7) "Department" means the department of natural resources.

(8) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such

agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future.

(9) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: PROVIDED, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(10) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(11) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(12) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(13) "Application" means the application required pursuant to RCW 76.09.050.

(14) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(15) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(16) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(17) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees.

(18) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(19) "Board" means the forest practices board created in RCW 76.09.030.

(20) "Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(21) "Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

Passed the Senate March 12, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 103

[Substitute Senate Bill 5509]

IDENTITY THEFT—HIGHER EDUCATION

AN ACT Relating to identification of students, staff, and faculty at institutions of higher education; adding a new section to chapter 28B.10 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 the occurrences of identity theft are increasing. The legislature also finds that widespread use of the federally issued social security numbers has made identity theft more likely to occur.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Institutions of higher education shall not use the social security number of any student, staff, or faculty for identification except for the purposes of employment, financial aid, research, assessment, accountability, transcripts, or as otherwise required by state or federal law.

(2) Each institution of higher education shall develop a system of personal identifiers for students to be used for grading and other administrative purposes. The personal identifiers may not be social security numbers.

NEW SECTION. Sec. 3. The institutions of higher education, in conjunction with the higher education coordinating board and the state board for community

and technical colleges, shall submit a report to the legislature by December 1, 2001, outlining the institution's personal identifier system.

NEW SECTION. Sec. 4. Each institution of higher education shall use its own existing budgetary funds to develop the system for personal identifiers. No new state funds shall be allocated for this purpose.

NEW SECTION. Sec. 5. Section 2 of this act takes effect July 1, 2002.

Passed the Senate March 10, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 104

[Senate Bill 5518]

MOTORCYCLE ENDORSEMENT EXAMINATION—WAIVER

AN ACT Relating to the waiver of motorcycle endorsement examination after satisfactory completion of motorcycle operator training; amending RCW 46.20.515; and reenacting and amending RCW 46.20.505.

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

Sec. 1. RCW 46.20.505 and 1999 c 308 s 5 and 1999 c 274 s 9 are each reenacted and amended to read as follows:

Every person applying for a special endorsement of a driver's license authorizing such person to drive a motorcycle or a motor-driven cycle shall pay ~~((an examination))~~ a fee of two dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ten dollars, and the subsequent renewal endorsement fee shall not exceed twenty-five dollars, unless the endorsement is renewed or extended for a period other than five years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. The initial and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund.

Sec. 2. RCW 46.20.515 and 1999 c 274 s 11 are each amended to read as follows:

The motorcycle endorsement examination must emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision. The department may waive all or part of the examination for persons who satisfactorily complete the voluntary motorcycle operator training and education program authorized under RCW 46.20.520.

Passed the Senate March 10, 2001.
 Passed the House April 10, 2001.
 Approved by the Governor April 19, 2001.
 Filed in Office of Secretary of State April 19, 2001.

CHAPTER 105

[Senate Bill 5531]
 FISHERY LICENSES

AN ACT Relating to limitations on fishery licenses; and amending RCW 77.70.410, 77.70.420, 77.65.100, and 77.65.110.

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

Sec. 1. RCW 77.70.410 and 2000 c 107 s 84 are each amended to read as follows:

(1) The ~~shrimp pot~~-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;))~~ and 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 77.65.220.

~~((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;))~~

~~(2) 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, except upon the death of the licensee the license shall be treated as analogous to personal property for purposes of inheritance and intestacy.~~

~~(3) No more than two shrimp pot-Puget Sound fishery licenses may be owned by a licensee. The licensee must transfer the second license into the licensee's name, and designate on the second license the same vessel as is designated on the first license at the time of the transfer. Licensees who hold two shrimp pot-Puget Sound fishery licenses may not transfer one of the two licenses for a twelve-month period beginning on the date the second license is transferred to the licensee, but the licensee may transfer both licenses to another natural person. The nontransferability provisions of this subsection start anew for the receiver of the two licenses. Licensees who hold two shrimp pot-Puget sound fishery licenses may fish one and one-half times the maximum number of pots allowed for Puget Sound shrimp, and may retain and land one and one-half times the maximum catch limits established for Puget Sound shrimp taken with shellfish pot gear.~~

~~(4) Through December 31, 2001, 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)) transferable only to a current shrimp pot-Puget Sound fishery licensee, or upon death of the licensee. Beginning January 1, 2002, shrimp pot-Puget Sound commercial fishery licenses are transferable, except holders of two shrimp pot-Puget Sound licenses are subject to nontransferability provisions as provided for in this section.~~

(5) Through December 31, 2001, a shrimp pot-Puget Sound licensee may designate any natural person as the alternate operator for the license. Beginning January 1, 2002, a shrimp pot-Puget Sound licensee may designate only an immediate family member, as defined in RCW 77.12.047, as the alternate operator. A licensee with a bona fide medical emergency may designate a person other than an immediate family member as the alternate operator for a period not to exceed two years, provided the licensee documents the medical emergency with letters from two medical doctors describing the illness or condition that prevents the licensee from participating in the fishery. The two-year period may be extended by the director upon recommendation of a department-appointed Puget Sound shrimp advisory board. If the licensee has no immediate family member who is capable of operating the license, the licensee may make a request to the Puget Sound shrimp advisory board to designate an alternate operator who is not an immediate family member, and upon recommendation of the Puget Sound shrimp advisory board, the director may allow designation of an alternate operator who is not an immediate family member.

Sec. 2. RCW 77.70.420 and 2000 c 107 s 85 are each amended to read as follows:

(1) The ~~shrimp trawl-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,)) and~~ 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 77.65.220.

~~((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,))~~

(2) 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)), except upon the death of the licensee the license shall be treated as analogous to personal property for purposes of inheritance and intestacy.~~

(3) No more than one shrimp trawl-Puget Sound fishery license may be owned by a licensee.

(4) Through December 31, 2001, shrimp trawl-Puget Sound fishery licenses are nontransferable, except upon death of the licensee. Beginning January 1, 2002, shrimp trawl-Puget Sound licenses are transferable.

(5) Through December 31, 2001, a shrimp trawl-Puget Sound licensee may designate any natural person as the alternate operator for the license. Beginning January 1, 2002, a shrimp trawl-Puget Sound licensee may designate only an immediate family member, as defined in RCW 77.12.047, as the alternate operator. A licensee with a bona fide medical emergency may designate a person other than an immediate family member as the alternate operator for a period not to exceed two years, provided the licensee documents the medical emergency with letters from two medical doctors describing the illness or condition that prevents the immediate family member from participating in the fishery. The two-year period may be extended by the director upon recommendation of a department-appointed Puget Sound shrimp advisory board. If the licensee has no immediate family member who is capable of operating the license, the licensee may make a request to the Puget Sound shrimp advisory board to designate an alternate operator who is not an immediate family member, and upon recommendation of the Puget Sound shrimp advisory board, the director may allow designation of an alternate operator who is not an immediate family member.

Sec. 3. RCW 77.65.100 and 1998 c 190 s 94 are each amended to read as follows:

This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries, except the same vessel may be designated on two of the following licenses, provided the licenses are owned by the same licensee:

- (a) Puget Sound Dungeness crab fishery license;
- (b) Shrimp pot-Puget Sound fishery license;
- (c) Sea cucumber dive fishery license; and
- (d) Sea urchin dive fishery license.

~~(4) No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license.~~

Sec. 4. RCW 77.65.110 and 2000 c 107 s 32 are each amended to read as follows:

This section applies to all commercial fishery licenses, charter boat license, and delivery licenses ~~(, except for whiting—Puget Sound fishery licenses and emergency salmon delivery licenses:~~

~~(1) The license holder may engage in the activity authorized by a license subject to this section. With the exception of Dungeness crab—coastal fishery class B licensees licensed under RCW 77.70.280(4), the holder of a license subject to this section may also designate up to two alternate operators for the license. Dungeness crab—coastal fishery class B licensees may not designate alternate operators).~~

(1) A person designated as an alternate operator must possess an alternate operator license issued under RCW 77.65.130, and be designated on the license prior to engaging in the activities authorized by the license. The holder of the commercial fishery license, charter boat license, or delivery license may designate up to two alternate operators for the license, except:

(a) Whiting—Puget Sound fishery licensees may not designate alternate operators;

(b) Emergency salmon delivery licensees may not designate alternate operators;

(c) Shrimp pot—Puget Sound fishery licensees may designate no more than one alternate operator at a time; and

(d) Shrimp trawl—Puget Sound fishery licensees may designate no more than one alternate operator at a time.

(2) The fee to change the alternate operator designation is twenty-two dollars.

Passed the Senate March 9, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 106

[Engrossed Substitute Senate Bill 5566]

PHARMACY IDENTIFICATION CARDS

AN ACT Relating to requiring uniform prescription drug information cards; adding a new section to chapter 48.43 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to improve care to patients by minimizing confusion, eliminating unnecessary paperwork, decreasing administrative burdens, and streamlining dispensing of prescription products paid for by third-party payors.

NEW SECTION. Sec. 2. A new section is added to chapter 48.43 RCW to read as follows:

(1) A health carrier that provides coverage for prescription drugs provided on an outpatient basis and issues a card or other technology for claims processing, or an administrator of a health benefit plan including, but not limited to, third-party administrators for self-insured plans, pharmacy benefits managers, and state administered plans, shall issue to its enrollees a pharmacy identification card or other technology containing all information required for proper prescription drug claims adjudication.

(2) Upon renewal of the health benefit plan, information on the pharmacy identification card or other technology shall be made current by the health carrier or other entity that issues the card.

(3) Nothing in this section shall be construed to require any health carrier or administrator of a health benefit plan to issue a pharmacy identification card or other technology separate from another identification card issued to an enrollee under the health benefit plan if the identification card contains all of the information required under subsection (1) of this section.

(4) This section applies to health benefit plans that are delivered, issued for delivery, or renewed on or after July 1, 2003. For the purposes of this section, renewal of a health benefit policy, contract, or plan occurs on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

(5) The insurance commissioner may adopt rules to implement this act, taking into consideration any relevant standards developed by the national council for prescription drug programs and the requirements of the federal health insurance portability and accountability act of 1996.

Passed the Senate March 13, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 107

[Substitute Senate Bill 5572]

HIGHWAY SIGNS—CRIME STOPPERS

AN ACT Relating to permissible highway signs; and amending RCW 47.42.040.

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

Sec. 1. RCW 47.42.040 and 1991 c 94 s 2 are each amended to read as follows:

It is declared to be the policy of the state that no signs which are visible from the main traveled way of the interstate system, primary system, or scenic system shall be erected or maintained except the following types:

(1) Directional or other official signs or notices that are required or authorized by law including signs with the Crime Stoppers name, logo, and telephone number;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the national standards promulgated thereunder by the secretary of commerce or the secretary of transportation, advertising activities being conducted at a location within twelve miles of the point at which such signs are located: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(5) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation, designed to give information in the specific interest of the traveling public: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(6) Signs lawfully in existence on October 22, 1965, determined by the commission, subject to the approval of the United States secretary of transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW;

(7) Public service signs, located on school bus stop shelters, which:

(a) Identify the donor, sponsor, or contributor of said shelters;

(b) Contain safety slogans or messages which occupy not less than sixty percent of the area of the sign;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and

(e) Do not exceed thirty-two square feet in area. Not more than one sign on each shelter may face in any one direction.

Subsection (7) of this section notwithstanding, the department of transportation shall adopt regulations relating to the appearance of school bus shelters, the placement, size, and public service content of public service signs located thereon,

and the prominence of the identification of the donors, sponsors, or contributors of the shelters((-));

(8) Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise sign;

(c) Signs shall not be placed within an incorporated city or town;

(d) Premises on which the seasonal agricultural products are sold 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;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections;

(f) The department shall establish a permit system and fee schedule and rules for the manufacturing, installation, and maintenance of these signs in accordance with the policy of this chapter;

(g) Signs in violation of these provisions shall be removed in accordance with the procedures in RCW 47.42.080;

Only signs of types 1, 2, 3, 7, and 8 may be erected or maintained within view of the scenic system. Signs of types 7 and 8 may also be erected or maintained within view of the federal aid primary system.

Passed the Senate March 10, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 108

[Substitute Senate Bill 5733]

COUNTY ROAD CONSTRUCTION

AN ACT Relating to county road construction projects; and amending RCW 36.77.065.

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

Sec. 1. RCW 36.77.065 and 1980 c 40 s 1 are each amended to read as follows:

The board may cause any county road to be constructed or improved by day labor as provided in this section.

(1) As used in this section, "county road construction budget" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts 541.00 through 541.90 in effect April 1, 1975: PROVIDED, That such costs shall

not include those costs assigned to the preliminary engineering account 541.11, right of way accounts 541.20 through 541.25, ancillary operations account 541.80, and ferries account 541.81 in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds fifty thousand people, the total amount of day labor construction programs one county may perform annually shall total no more than the amounts determined in the following manner:

(a) Any county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to no more than eight hundred thousand dollars or fifteen percent of the county's total annual county road construction budget, whichever is greater.

(b) Any county with a total annual county road construction budget ~~((over))~~ of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred twenty-five thousand dollars or twenty percent of the county's total annual county road construction budget, whichever is greater.

(c) Any county with a total annual county road construction budget ~~((over))~~ of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars or thirty-five percent of the county's total annual county road construction budget, whichever is greater.

(d) Any county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars: PROVIDED, That any county with a total annual road construction budget of less than five hundred thousand dollars may, by resolution of the board at the time the county road construction budget is adopted, elect to construct or improve county roads by day labor in an amount not to exceed thirty-five thousand dollars on any one project, including labor, equipment, and materials; such election to be in lieu of the two hundred fifty thousand dollar limit provided for in this section, except that any project means a complete project and the division of any project into units of work or classes of work so as to permit construction by day labor is not authorized.

(3) For counties with a population of less than fifty thousand people, the total amount of day labor construction programs one county may perform annually may total no more than the amounts determined in the following manner:

(a) A county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to not more than eight hundred eighty thousand dollars or twenty-five percent of the county's total annual county road construction budget, whichever is greater;

(b) A county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five

hundred seventy-seven thousand dollars or thirty percent of the county's total annual county road construction budget, whichever is greater:

(c) A county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars or forty-five percent of the county's total annual county road construction budget, whichever is greater:

(d) A county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars. However, such a county may, by resolution of the board at the time the county road construction budget is adopted, elect instead to construct or improve county roads by day labor in an amount not to exceed thirty-eight thousand five hundred dollars on any one project, including labor, equipment, and materials. That election is in lieu of the two hundred seventy-five thousand dollar limit provided for in this section. As used in this section, "any project" means a complete project, and a county may not divide a project into units of work or classes of work so as to permit construction by day labor.

(4) Any county that adopts a county road construction budget unreasonably exceeding that county's actual road construction expenditures for the same budget year which has the effect of permitting the county to exceed the day labor amounts established in this section is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section. Any county, whose expenditure for day labor for road construction projects unreasonably exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

~~((3))~~ (5) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by day labor by division of the project into units of work or classes of work.

Passed the Senate March 13, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 109

[Senate Bill 5903]

IMPAIRED PHYSICIAN PROGRAM—LICENSE SURCHARGE

AN ACT Relating to increasing the license surcharge for the impaired physician program; and amending RCW 18.71.310.

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

Sec. 1. RCW 18.71.310 and 1998 c 132 s 4 are each amended to read as follows:

(1) The commission shall enter into a contract with the entity to implement an impaired physician program. The commission may enter into a contract with the entity for up to six years in length. The impaired physician program may include any or all of the following:

- (a) Entering into relationships supportive of the impaired physician program with professionals who provide either evaluation or treatment services, or both;
- (b) Receiving and assessing reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment;
- (d) Upon reasonable cause, referring suspected or verified impaired physicians for evaluation or treatment;
- (e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the commission;
- (f) Providing monitoring and continuing treatment and rehabilitative support of physicians;
- (g) Performing such other activities as agreed upon by the commission and the entity; and
- (h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of not less than twenty-five and not more than thirty-five dollars per year on each license renewal or issuance of a new license to be collected by the department of health from every physician and surgeon licensed under this chapter in addition to other license fees. These moneys shall be placed in the impaired physician account to be used solely for the implementation of the impaired physician program.

Passed the Senate March 14, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 110

[Substitute Senate Bill 6035]

COLLEGE BOARD—ELECTRONIC JOB BANK

AN ACT Relating to directing the state board for community and technical colleges to create a college board job bank; and adding a new section to chapter 28B.50 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.50 RCW to read as follows:

(1) The college board shall create an electronic job bank on its web site to act as a clearinghouse for people seeking academic teaching positions at the state's community and technical colleges. The job bank must be accessible on the internet. Use of the electronic job bank is not mandatory.

(2) The college board shall include a separate section on its electronic job bank reserved for the exclusive listing of part-time academic employment opportunities at state community and technical colleges.

(3) The separate section of the electronic job bank under subsection (2) of this section must, at a minimum, include an internet link to each of the following components, if available from the community or technical college offering the employment opportunity:

- (a) A description of the open position;
- (b) A listing of required skills and experience necessary for the position; and
- (c) The district where the employment opening exists.

(4) The college board shall develop a strategy to promote its electronic job bank to prospective candidates.

Passed the Senate March 13, 2001.

Passed the House April 10, 2001.

Approved by the Governor April 19, 2001.

Filed in Office of Secretary of State April 19, 2001.

CHAPTER 111

[House Bill 1716]

VETERANS—BENEFITS

AN ACT Relating to income assistance benefits for qualified World War II veterans living in the Republic of the Philippines; adding a new section to chapter 74.04 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds and declares:

(1) That soldiers who were members of the government of the Commonwealth of the Philippines military forces who were in the service of the United States of America on July 31, 1941, including the organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief of the Southwest Pacific Area or other competent authority in the Army of the United States, performed an invaluable function during World War II.

(2) It is in the public interest for the state of Washington to recognize those courageous soldiers who fought and defended American interests during World War II and who are currently receiving supplemental state benefits under RCW 74.04.620 as of December 14, 1999, by permitting them to return to their homeland to spend their last days without a complete forfeiture of benefits.

NEW SECTION. Sec. 2. A new section is added to chapter 74.04 RCW to read as follows:

(1) Notwithstanding any other provision of law, any person receiving benefits under RCW 74.04.620 on December 14, 1999, and who meets the requirements of subsection (2) of this section is eligible to receive benefits under this section although he or she does not retain a residence in the state and returns to the Republic of the Philippines, if he or she maintains a permanent residence in the Republic of the Philippines without any lapse of his or her presence in the Republic of the Philippines.

(2) A person subject to subsection (1) of this section is eligible to receive benefits pursuant to this section if he or she was receiving benefits pursuant to RCW 74.04.620 on December 14, 1999, and meets both the following requirements:

(a) He or she is a veteran of World War II; and

(b)(i) He or she was a member of the government of the Commonwealth of the Philippines military forces who was in the service of the United States on July 26, 1941, or thereafter; or

(ii) He or she was a Regular Philippine Scout who enlisted in Filipino-manned units of the United States Army prior to October 6, 1945; or

(iii) He or she was a member of the Special Philippine Scouts who enlisted in the United States Armed Forces between October 6, 1945, and June 30, 1947.

(3) Within funds appropriated for this purpose, the department is authorized to make a one-time lump sum payment of one thousand five hundred dollars to each person eligible for benefits under this section.

(a) Benefits paid under this section are in lieu of benefits paid under RCW 74.04.620 for the period for which the benefits are paid.

(b) Benefits are to be paid under this section for any period during which the recipient is receiving benefits under Title 8 of the federal Social Security Act as a result of the application of federal Public Law 106-169, subject to any limitations imposed by this section.

(4) This section applies only to an individual who returns to the Republic of the Philippines for the period during which the individual establishes and maintains a residence in the Republic of the Philippines.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor April 21, 2001.

Filed in Office of Secretary of State April 21, 2001.

CHAPTER 112

[Engrossed Substitute Senate Bill 5942]

SERVICE ANIMALS

AN ACT Relating to dog guides and service animals; adding a new section to chapter 9.91 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. This act may be known and cited as Layla's Law.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.20 RCW to read as follows:

(1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except that for a second or subsequent offense it is a gross misdemeanor.

(b) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except that for a second or subsequent offense it is a gross misdemeanor.

(2)(a) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony.

(4) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030.

(5)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and compensation for wages or earned income lost by the dog guide or service animal user.

(6) Nothing in this section shall affect any civil remedies available for violation of this section.

(7) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value.

Passed the Senate March 12, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 25, 2001.

Filed in Office of Secretary of State April 25, 2001.

CHAPTER 113

[House Bill 1018]

TAX RELIEF—DISASTERS

AN ACT Relating to tax relief for disasters; adding a new section to chapter 82.08 RCW; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of labor and services rendered in respect to:

(a) The moving of houses out of any landslide area that has been declared as a federal disaster area;

(b) The demolition of houses located in a landslide area that has been declared as a federal disaster area; or

(c) The removal of debris from a landslide area that has been declared as a federal disaster area.

(2) This section expires July 1, 2003.

NEW SECTION. **Sec. 2.** 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 immediately.

Passed the House February 22, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 114

[Engrossed House Bill 1076]

PHYSICIANS—LIMITED LICENSES

AN ACT Relating to a limited license to practice medicine; amending RCW 18.71.095; and declaring an emergency.

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

Sec. 1. RCW 18.71.095 and 1996 c 191 s 54 are each amended to read as follows:

The commission may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The commission may, upon the written request of the secretary of the department of social and health services or the secretary of corrections, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department of social and health services or the department of corrections as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services or the department of corrections.

(2) The commission may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of two years of postgraduate medical training, and that the applicant has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the commission, the commission may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his or her duties as a resident physician and shall not authorize the physician to engage in any other form of practice. Each resident physician 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 at the place where services are rendered.

(4)(a) Upon nomination by the dean of the school of medicine at the University of Washington or the chief executive officer of a hospital or other appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to a physician applicant invited to serve as a teaching-research member of the institution's instructional staff if the sponsoring institution and the applicant give evidence that he or she has graduated from a recognized medical school and has been licensed or otherwise privileged to practice medicine at his or her location of origin. Such license shall permit the recipient to practice medicine only within the confines of the instructional program specified in the application and shall terminate whenever the holder ceases to be involved in that program, or at the end of one year, whichever is earlier. Upon request of the applicant and the institutional authority, the license may be renewed (~~for no more than a total of two years~~).

(b) Upon nomination by the dean of the school of medicine of the University of Washington or the chief executive officer of any hospital or appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to an applicant selected by the sponsoring institution to be enrolled in one of its designated departmental or divisional fellowship programs provided that the applicant shall have graduated from a recognized medical school and has been granted a license or other appropriate certificate to practice medicine in the location of the applicant's origin. Such license shall permit the holder only to practice medicine within the confines of the fellowship program to which he or she has been appointed and, upon the request of the applicant and the sponsoring institution, the license may be renewed by the commission for no more than a total of two years.

All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the medical profession, in accordance with this chapter and chapter 18.130 RCW.

Persons applying for licensure and renewing licenses pursuant to this section shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. Any person who obtains a limited license pursuant to this section may apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter.

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 27, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 115

[Substitute House Bill 1117]

RESTITUTION OBLIGATIONS—ENFORCEMENT

AN ACT Relating to enforcement of court-ordered restitution obligations; and adding new sections to chapter 3.66 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 3.66 RCW to read as follows:

All court-ordered restitution obligations that are ordered as a result of a conviction for a criminal offense in a court of limited jurisdiction may 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. The judgment and sentence must identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment.

All court-ordered restitution 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 court may extend the criminal judgment an additional ten years for payment of court-ordered restitution only if the court finds that the offender has not made a good faith attempt to pay.

The party or entity to whom the court-ordered restitution obligation is owed may utilize any other remedies available to the party or entity to collect the court-ordered financial obligation.

Nothing in this section may be construed to deprive the court of the authority to determine whether the offender's failure to pay the legal financial obligation constitutes a violation of a condition of probation or to impose a sanction upon the offender if such a violation is found.

NEW SECTION. Sec. 2. A new section is added to chapter 3.66 RCW to read as follows:

If the party or entity for whom a court-ordered restitution obligation has been entered pursuant to this title seeks to enforce the judgment as a lien on real estate, he or she shall commence a lien of judgment upon the real estate of the judgment debtor/obligor as provided in RCW 4.56.200.

When any court-ordered restitution obligation entered pursuant to this title is paid or satisfied, the clerk of the court of limited jurisdiction in which the restitution obligation was ordered shall note upon the record of the court of limited jurisdiction satisfaction thereof including the date of the satisfaction.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 116

[Substitute House Bill 1203]

TAX EXEMPTION DOCUMENTATION REQUIREMENTS

AN ACT Relating to department of revenue authority regarding sales and use tax exemption documentation and retention requirements; adding a new section to chapter 82.32 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that current sales and use tax exemption documentation requirements are often confusing and burdensome for retailers, taxpayers, and the state. Additionally, the legislature notes the national efforts under way to simplify and streamline the sales and use tax, and that those efforts include a new system for retailers to use in processing sales and use tax exemptions. The legislature further finds that it would be beneficial to the state and its residents to allow for the simplification of sales and use tax exemption requirements.

NEW SECTION. Sec. 2. A new section is added to chapter 82.32 RCW to read as follows:

(1) The department is authorized to enter into agreements with sellers who meet the criteria in this section for a project on sales and use tax exemption requirements. This project will allow the use of electronic data collection in lieu of paper certificates otherwise required by law, including the use of electronic signatures.

(2) The object of the project is to determine whether using an electronic system and reviewing the data regarding the exempt transactions provides the same level of reliability as the current system while lessening the burden on the seller.

(3) A business making both sales taxable and exempt under chapter 82.08 or 82.12 RCW, that has electronic data-collecting capabilities, and that wishes to participate in the project may make application to the department in such form and manner as the department may require. To be eligible for such participation, a seller must demonstrate its capability to take part in the project and to provide data to the department in a form in which the data can be used by the department. The department is not required to accept all applicants in this project and is not required to provide any reason for not selecting a participant. A seller selected as a participant may be relieved of other sales and use tax exemption documentation requirements provided by law as covered by the project, and will be relieved of the good faith requirement under RCW 82.08.050 to the extent that it has made available to the department the data required by the project.

NEW SECTION. Sec. 3. The code reviser shall place a cross-reference note to section 2 of this act following RCW 82.08.050 and 82.12.040.

Passed the House March 9, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor April 27, 2001.
Filed in Office of Secretary of State April 27, 2001.

CHAPTER 117

[Substitute House Bill 1314]

FISCAL MATTERS—SUPPLEMENTAL OPERATING APPROPRIATIONS

AN ACT Relating to fiscal matters: amending 1999 c 309 ss 106, 111, 119, 130, 133, 134, 138, 223, 708, and 803 (uncodified); amending 2000 c 241 s 4 (uncodified); amending 2000 2nd sp.s. c 1 ss 107, 108, 109, 111, 112, 114, 115, 117, 118, 119, 124, 126, 201, 202, 203, 205, 206, 207, 208, 209, 210, 211, 212, 213, 216, 217, 218, 219, 220, 222, 301, 302, 305, 306, 401, 402, 501, 502, 504, 505, 507, 508, 510, 511, 512, 514, 515, 516, 517, 518, 519, 602, 606, 701, 703, 704, 730, and 802 (uncodified); adding new sections to 1999 c 309 (uncodified); creating new sections; making appropriations; and declaring an emergency.

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

PART I

GENERAL GOVERNMENT

Sec. 101. 1999 c 309 s 106 (uncodified) is amended to read as follows:

FOR THE JOINT LEGISLATIVE SYSTEMS COMMITTEE

General Fund—State Appropriation (FY 2000)	\$	5,847,000
General Fund—State Appropriation (FY 2001)	\$	5,847,000
TOTAL APPROPRIATION	\$	11,694,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations shall be transferred to the legislative systems revolving fund. Transfer authority shall not be granted for the 2001-03 fiscal biennium.

Sec. 102. 1999 c 309 s 111 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON JUDICIAL CONDUCT

General Fund—State Appropriation (FY 2000)	\$	904,000
General Fund—State Appropriation (FY 2001)	\$	((852,000))
		<u>944,000</u>
TOTAL APPROPRIATION	\$	((1,756,000))
		<u>1,848,000</u>

Sec. 103. 2000 2nd sp.s. c 1 s 107 (uncodified) is amended to read as follows:

FOR THE ADMINISTRATOR FOR THE COURTS

General Fund—State Appropriation (FY 2000)	\$	13,144,000
General Fund—State Appropriation (FY 2001)	\$	((14,569,000))
		<u>14,204,000</u>
Public Safety and Education Account—State Appropriation	\$	((25,085,000))
		<u>25,135,000</u>

Judicial Information Systems Account—State

Appropriation	\$	19,016,000
TOTAL APPROPRIATION	\$	((71,814,000))
		<u>71,499,000</u>

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

(1) Funding provided in the judicial information systems account appropriation shall be used for the operations and maintenance of technology systems that improve services provided by the supreme court, the court of appeals, the office of public defense, and the administrator for the courts.

(2) No moneys appropriated in this section may be expended by the administrator for the courts for payments in excess of fifty percent of the employer contribution on behalf of superior court judges for insurance and health care plans and federal social security and medicare and medical aid benefits. Consistent with Article IV, section 13 of the state Constitution and 1996 Attorney General's Opinion No. 2, it is the intent of the legislature that the costs of these employer contributions shall be shared equally between the state and county or counties in which the judges serve. The administrator for the courts shall continue to implement procedures for the collection and disbursement of these employer contributions.

(3) \$223,000 of the public safety and education account appropriation is provided solely for the gender and justice commission.

(4) \$308,000 of the public safety and education account appropriation is provided solely for the minority and justice commission.

(5) \$278,000 of the general fund—state appropriation for fiscal year 2000, \$285,000 of the general fund—state appropriation for fiscal year 2001, and \$263,000 of the public safety and education account appropriation are provided solely for the workload associated with tax warrants and other state cases filed in Thurston county.

(6) \$200,000 of the public safety and education account appropriation is provided solely for a unified family court pilot program. Of this amount, \$150,000 is provided for the costs of establishing the program and \$50,000 is provided for costs associated with evaluating the efficacy of the program. The pilot program grant is limited to the 1999-01 biennium. After this time, it is assumed that funding for continuation of the unified family court or expansion to other counties would be provided by local jurisdictions based on the results of the evaluation of the program.

(7) \$130,000 of the general fund—state appropriation for fiscal year 2000 and \$130,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the new judicial positions authorized by Engrossed Senate Bill No. 5036 (superior court judges).

(8) \$132,000 of the general fund—state appropriation for fiscal year 2000 and \$136,000 of the general fund—state appropriation for fiscal year 2001 are provided

solely for the state's portion of increased costs in the superior court mandatory arbitration program.

(9) \$750,000 of the general fund—state appropriation for fiscal year 2001 is provided solely to increase the number of children served by court-appointed special advocates in dependency matters. The office of the administrator for the courts, after consulting with the Washington association of juvenile court administrators and the Washington association of court-appointed special advocate/guardian ad litem programs, shall distribute the funds to volunteer court-appointed special advocate/guardian ad litem programs. The distribution of funding shall be based on the number of children who need volunteer court-appointed special advocate representation and shall be equally accessible to all volunteer court-appointed special advocate/guardian ad litem programs. The administrator for the courts shall not retain more than six percent of total funding to cover administrative or any other agency costs.

(10) \$30,000 of the public safety and education account—state appropriation is provided solely for the office of the administrator for the courts to convene a task force to review whether there are revisions to existing statutes and court rules which, if implemented, would decrease the likelihood of an inappropriate imposition of the death penalty.

Sec. 104. 2000 2nd sp.s. c 1 s 108 (uncodified) is amended to read as follows:

FOR THE OFFICE OF PUBLIC DEFENSE

General Fund—State Appropriation (FY 2001)	\$	500,000
Public Safety and Education Account—State Appropriation	\$	((12,490,000))
		<u>12,080,000</u>
TOTAL APPROPRIATION	\$	((12,490,000))
		<u>12,580,000</u>

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

(1) \$558,000 of the public safety and education account appropriation is provided solely to increase the reimbursement for private attorneys providing constitutionally mandated indigent defense in nondeath penalty cases.

(2) \$51,000 of the public safety and education account appropriation is provided solely for the implementation of House Bill No. 1599 (court funding). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(3) Amounts provided from the public safety and education account appropriation in this section include funding for investigative services in death penalty personal restraint petitions.

(4) The entire general fund—state appropriation is provided solely for a dependency and termination legal representation funding pilot program.

(a) The goal of the pilot program shall be to enhance the quality of legal representation in dependency and termination hearings, thereby reducing the

number of continuances requested by contract attorneys, including those based on the unavailability of defense counsel. To meet the goal, the pilot shall include the following components:

(i) A maximum caseload requirement of 90 dependency and termination cases per full-time attorney;

(ii) Implementation of enhanced defense attorney practice standards, including but not limited to those related to reasonable case preparation and the delivery of adequate client advice, as developed by Washington state public defense attorneys and included in the office of public defense December 1999 report *Costs of Defense and Children's Representation in Dependency and Termination Hearings*;

(iii) Use of investigative and expert services in appropriate cases; and

(iv) Effective implementation of indigency screening of all dependency and termination parents, guardians, and legal custodians represented by appointed counsel.

(b) The pilot program shall be established in one eastern and one western Washington juvenile court.

(c) The director shall contract for an independent evaluation of the pilot program benefits and costs. An interim evaluation shall be submitted to the governor and fiscal committees of the legislature no later than January 1, 2001. A final evaluation shall be submitted to the governor and the fiscal committees of the legislature no later than ninety days following the close of the 1999-01 fiscal biennium.

(5) \$50,000 of the public safety and education account—state appropriation is provided solely for the implementation of Substitute House Bill No. 2491 (DNA testing of offenders). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

Sec. 105. 2000 2nd sp.s. c 1 s 109 (uncodified) is amended to read as follows:

FOR THE OFFICE OF THE GOVERNOR

General Fund—State Appropriation (FY 2000)	\$	5,762,000
General Fund—State Appropriation (FY 2001)	\$	5,720,000
General Fund—Federal Appropriation	\$	209,000
Water Quality Account—State Appropriation	\$	700,000
TOTAL APPROPRIATION	\$	((12,315,000))
		<u>12,391,600</u>

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

(1) \$1,612,000 of the general fund—state appropriation for fiscal year 2000, \$1,588,000 of the general fund—state appropriation for fiscal year 2001, \$700,000 of the water quality account appropriation, and \$209,000 of the general fund—federal appropriation are provided solely for the implementation of the Puget Sound work plan and agency action items PSAT-01 through PSAT-05.

(2) \$100,000 of the general fund—state appropriation for fiscal year 2000 and \$100,000 of the general fund—state appropriation for fiscal year 2001 are provided

solely for the salmon recovery office to support the efforts of the independent science panel.

(3) \$62,000 of the fiscal year 2000 general fund—state appropriation and \$63,000 of the fiscal year 2001 general fund—state appropriation are provided solely to implement Second Substitute Senate Bill No. 5595 or Engrossed Substitute House Bill No. 2079, establishing the salmon recovery funding board in the office of the governor. If legislation establishing the board is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(4) \$3,000 of the general fund—state appropriation for fiscal year 2001 is provided solely to implement Senate Bill No. 5408 (state medal of valor).

Sec. 106. 2000 2nd sp.s. c 1 s 111 (uncodified) is amended to read as follows:

FOR THE PUBLIC DISCLOSURE COMMISSION

General Fund—State Appropriation (FY 2000)	\$	1,751,000
General Fund—State Appropriation (FY 2001)	\$	((2,170,000))
		<u>2,307,000</u>
TOTAL APPROPRIATION	\$	((3,921,000))
		<u>4,058,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$328,000 of the general fund—state appropriation for fiscal year 2000 and \$760,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5931 (electronic filing and public access). If the bill is not enacted by June 30, 1999, the amounts provided shall lapse.

Sec. 107. 2000 2nd sp.s. c 1 s 112 (uncodified) is amended to read as follows:

FOR THE SECRETARY OF STATE

General Fund—State Appropriation (FY 2000)	\$	14,043,000
General Fund—State Appropriation (FY 2001)	\$	((8,399,000))
		<u>9,770,000</u>
General Fund—Private/Local Appropriation	\$	120,000
Archives and Records Management Account—State Appropriation	\$	((5,489,000))
		<u>5,876,000</u>
Archives and Records Management Account—Private/ Local Appropriation	\$	((4,123,000))
		<u>4,132,000</u>
Department of Personnel Service Account—State Appropriation	\$	681,000
TOTAL APPROPRIATION	\$	((32,855,000))
		<u>34,622,000</u>

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

(1) \$2,355,000 of the general fund—state appropriation for fiscal year 2000 is provided solely to reimburse counties for the state's share of primary and general election costs and the costs of conducting mandatory recounts on state measures.

(2) \$3,780,000 of the general fund—state appropriation for fiscal year 2000 ~~((is))~~ and \$1,621,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to reimburse counties for the state's share of presidential preference primary election costs. For expenses payable in fiscal year 2001, counties shall be reimbursed only for those actual presidential preference primary election costs that the secretary of state validates as eligible for reimbursement.

(3) \$2,106,000 of the general fund—state appropriation for fiscal year 2000 and ~~(((\$2,663,000))~~ \$2,413,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the verification of initiative and referendum petitions, maintenance of related voter registration records, and the publication and distribution of the voters and candidates pamphlet.

(4) \$125,000 of the general fund—state appropriation for fiscal year 2000 and \$125,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for legal advertising of state measures under RCW 29.27.072.

(5)(a) \$1,870,350 of the general fund—state appropriation for fiscal year 2000 and \$1,907,757 of the general fund—state appropriation for fiscal year 2001 are provided solely for continuing the contract with a nonprofit organization to produce gavel-to-gavel television coverage of state government deliberations and other events of state-wide significance during the 1999-2001 biennium.

(b) The funding level for each year of the contract shall be based on the amount provided in this subsection and adjusted to reflect the implicit price deflator for the previous year. The nonprofit organization shall be required to raise contributions or commitments to make contributions, in cash or in kind, in an amount equal to forty percent of the state contribution. The office of the secretary of state may make full or partial payment once all criteria in (a) and (b) of this subsection have been satisfactorily documented.

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

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

(i) Attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, by any county, city, town, or other political subdivision of the state of Washington, or by the congress, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency;

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

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

(6) (~~(\$867,000)~~) \$1,252,000 of the archives and records management account—state appropriation is provided solely for operation of the central microfilming bureau under RCW 40.14.020(8).

(7) \$120,000 of the general fund—private/local appropriation is provided solely for the Washington quality awards council.

(8) \$20,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the operations of the task force on archaeology and historic preservation. The task force shall develop a single recommendation for consideration by the legislature and the governor on the issue of the location of the office of archaeology and historic preservation within state government. The recommended location shall maximize the office of archaeology and historic preservation's stature, visibility, accessibility, and delivery of service state-wide in the context of its critical role as an important link among downtown and neighborhood revitalization efforts, the cultural tourism movement, rural economic development initiatives, and the preservation of the structures and sites that still remain as the legacy of Washington's rich and diverse heritage. The task force shall consider and include in its recommendation how best both to realize the potential of the office of archaeology and historic preservation to generate revenue from services it could provide in international, national, state, local, and private venues and also how best to achieve adequate funding from all funding sources to assure that the office of archaeology and historic preservation can provide the best possible service to the citizens of the state. There shall be eleven members of the task force as follows: One member shall be the state historic preservation officer or his or her designee; two members shall be representatives of state agencies; two members shall be representatives of local governments; there shall be one representative each from the Washington state historical society, the eastern Washington state historical society, the Washington trust for historic preservation, and Indian tribes; and two members shall be representatives of the private sector who have experience in preservation of historic buildings or archaeological sites or who have particular interest in the issue of preservation of historic buildings and archaeological sites. The state historic preservation officer shall be the chair of the task force. The task force shall report to appropriate committees of the legislature and the governor by January 1, 2001.

(9) \$8,000 of the fiscal year 2001 general fund—state appropriation is provided solely to implement Senate Bill No. 5408 (state medal of valor).

Sec. 108. 1999 c 309 s 119 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON ASIAN-AMERICAN AFFAIRS

General Fund—State Appropriation (FY 2000)	\$	215,000
General Fund—State Appropriation (FY 2001)	\$	((215,000))
		<u>221,000</u>
TOTAL APPROPRIATION	\$	((430,000))
		<u>436,000</u>

Sec. 109. 2000 2nd sp.s. c 1 s 114 (uncodified) is amended to read as follows:

FOR THE CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

General Fund—State Appropriation (FY 2000)	\$	67,000
General Fund—State Appropriation (FY 2001)	\$	((128,000))
		<u>133,000</u>
TOTAL APPROPRIATION	\$	((195,000))
		<u>200,000</u>

The appropriations in this section are subject to the following conditions and limitations and are sufficient for the commission to: (1) Carry out statutorily required public hearings; (2) enter into an agreement with the department of personnel to provide data sharing, research support, and training for commission members and staff; (3) employ part-time staff in fiscal year 2000 to respond to requests for information; and (4) begin full-time staffing in September 2000 to allow for orientation and training for commission members prior to the next salary setting cycle. \$25,000 of the general fund—state appropriation for fiscal year 2000 and \$10,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for office rent for the remainder of the biennium, increased AFRS and consolidated mail costs, general administration consulting services, and unexpected commission meeting costs related to litigation. Future funding for lease costs beyond the current biennium shall be contingent upon the agency's colocation with another agency.

Sec. 110. 2000 2nd sp.s. c 1 s 115 (uncodified) is amended to read as follows:

FOR THE ATTORNEY GENERAL

General Fund—State Appropriation (FY 2000)	\$	4,079,000
General Fund—State Appropriation (FY 2001)	\$	((4,557,000))
		<u>4,527,000</u>
General Fund—Federal Appropriation	\$	2,526,000
Public Safety and Education Account—State Appropriation	\$	1,338,000
New Motor Vehicle Arbitration Account—State Appropriation	\$	1,109,000
Legal Services Revolving Account—State Appropriation	\$	118,390,000
TOTAL APPROPRIATION	\$	((131,999,000))
		<u>131,969,000</u>

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

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

(2) The attorney general and the office of financial management shall modify the attorney general billing system to meet the needs of user agencies for greater predictability, timeliness, and explanation of how legal services are being used by the agency. The attorney general shall provide the following information each month to agencies receiving legal services: (a) The full-time equivalent attorney services provided for the month; (b) the full-time equivalent investigator services provided for the month; (c) the full-time equivalent paralegal services provided for the month; and (d) direct legal costs, such as filing and docket fees, charged to the agency for the month.

(3) \$154,000 of the fiscal year 2000 general fund—state appropriation and \$308,000 of the fiscal year 2001 general fund—state appropriation are provided solely for the costs associated with the legal defense and implementation of initiative measures ((No. 695)) approved by the voters in fiscal years 2000 and 2001.

(4) \$486,000 of the legal services revolving account appropriation is provided solely to support activities related to vulnerable adults. Such activities include providing technical assistance for guardianships, financial exploitation cases, protection orders, and providing assistance to police and prosecutors addressing vulnerable adults.

(5) \$200,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for costs associated with enforcing state authority on taxation of liquor with respect to Resolution T-022-00, or any other tax or regulatory ordinances regarding liquor, adopted by the Confederated Tribes and Bands of the Yakama Nation.

Sec. 111. 2000 2nd sp.s. c 1 s 117 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

General Fund—State Appropriation (FY 2000)	\$	12,600,000
General Fund—State Appropriation (FY 2001)	\$	((13,208,000))
		<u>13,350,000</u>
General Fund—Federal Appropriation	\$	((23,340,000))
		<u>23,628,000</u>
General Fund—Private/Local Appropriation	\$	500,000
TOTAL APPROPRIATION	\$	((49,648,000))
		<u>50,078,000</u>

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

(1) \$50,000 of the general fund—state appropriation for fiscal year 2000 is provided solely to evaluate and promote the use by state and local agencies of the training facilities at the Hanford reservation.

(2) Funding in this section provides for a feasibility study to collect Washington enrollment data on distance learning programs sponsored by in-state and out-of-state private institutions in cooperation with the higher education coordinating board and the state board for community and technical colleges.

Findings shall be submitted to the appropriate committees of the legislature by January 2000.

(3) \$75,000 of the fiscal year 2000 general fund—state appropriation and \$75,000 of the fiscal year 2001 general fund—state appropriation are provided solely to track and administer state and federal funding for salmon recovery allocated by the salmon recovery funding board established under Second Substitute Senate Bill No. 5595 or Engrossed Substitute House Bill No. 2079.

(4) The office of financial management, in collaboration with the institutions of higher education, the higher education coordinating board, and the state board for community and technical colleges, shall modify state information systems in order to provide consistent data on students engaged in distance learning. Higher education institutions shall provide enrollment information in support of this effort. Reporting on the numbers and categories of students enrolled in distance learning by class level and institutions shall begin by fall term, 2000. Washington independent institutions of higher education are encouraged to participate in this process and to provide distance learner enrollment data.

(5) \$1,000,000 of the general fund—state appropriation and \$500,000 of the general fund—private/local appropriation are provided solely for the commission on early learning. One-half of the amount provided from the general fund—state shall not be expended unless matched by an equal amount from private sources.

(6) \$329,000 of the general fund—state appropriation for fiscal 2001 is provided solely to develop a centralized database of social service contract information as recommended by the task force on agency contracting services.

(7) \$689,000 of the general fund—state appropriation is provided solely for information systems improvements at the department of fish and wildlife, including a network upgrade, purchase of personal computers, and support for agency information systems.

(8) \$795,000 of the general fund—state appropriation is provided solely for improvements in the basic business practices at the department of fish and wildlife, including budget monitoring, cost accounting, time accounting and payroll systems, and license revenue forecasting.

(9) \$75,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the task force on health care reinsurance established by Second Substitute Senate Bill No. 6067 (health insurance coverage). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(10) \$285,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the office of financial management to adopt and publish uniform guidelines for the effective and efficient management of personal service contracts and client service contracts by all state agencies, conduct training on these guidelines for agency personnel, and conduct risk-based audits of personal service and client service contracts, as generally described in Second Substitute House Bill No. 2738 (state agency personal service contract practices).

(a) The guidelines shall, at a minimum, include: (i) Accounting methods, systems, measures, and principles to be used by agencies and contractors; (ii) precontract procedures for selecting potential contractors based on their qualifications and ability to perform; (iii) incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits; (iv) uniform contract terms to ensure contract performance and compliance with state and federal standards; (v) proper payment and reimbursement methods to ensure that the state receives full value for taxpayer moneys, including cost settlements and cost allowance; (vi) post-contract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment; (vii) adequate contract remedies and sanctions to ensure compliance; (viii) monitoring, fund tracking, risk assessment, and auditing procedures and requirements; (ix) financial reporting, record retention, and record access procedures and requirements; (x) procedures and criteria for terminating contracts for cause or otherwise; and (xi) other subjects related to effective and efficient contract management.

(b) The office of financial management shall provide a training course for agency personnel responsible for executing and managing personal service contracts and client service contracts. The course must contain training on effective and efficient contract management under the guidelines established under this subsection.

(c) The office of financial management shall conduct risk-based audits of the contracting practices associated with individual personal service and client service contracts from multiple state agencies to ensure compliance with the guidelines established in this subsection. The office of financial management shall forward the results of the audits conducted under this subsection to the governor, the appropriate standing committees of the legislature, and the joint legislative audit and review committee.

(11) \$30,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for a review of K-12 regional cost differences. The office of financial management shall conduct research, including a review of existing methods of determining regional cost differences. Regional cost differences shall include, but not be limited to, the cost of renting, leasing, or purchasing housing. The office of financial management shall report findings on cost differences on a regional basis and make recommendations on options for mitigating these differences to the appropriate committees of the house of representatives and senate by December 15, 2000.

(12) \$243,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for an audit of the state ferry capital program. The audit of ferry capital operations shall determine the following: Whether the ferry system is acquiring, protecting, and using its resources economically and efficiently; the causes of inefficiencies or uneconomical practices; and whether the ferry system has complied with laws and regulations governing economy and efficiency. This

audit shall build on audits performed by, or under the direction of, the joint legislative audit and review committee on ferry capital operations. In establishing the scope of this audit, the director of financial management shall solicit public comments from interested parties and benchmark the state ferry capital operations to other public and private ferry capital operations. To address the intent of this subsection, the director may contract for specialized expertise. The audit report shall be delivered on or before January 1, 2001, to the governor and to the fiscal committees of the state legislature.

Sec. 112. 1999 c 309 s 130 (uncodified) is amended to read as follows:

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

Administrative Hearings Revolving Account—State

Appropriation	\$	((20,749,000))
		<u>20,880,000</u>

Sec. 113. 2000 2nd sp.s. c 1 s 118 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF PERSONNEL

Department of Personnel Service Account—State

Appropriation	\$	16,999,000
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Higher Education Personnel Services Account—State

Appropriation	\$	1,640,000
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TOTAL APPROPRIATION	\$	18,639,000
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The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall reduce its charge for personnel services to the lowest rate possible.

(2) The department of personnel service account appropriation contains sufficient funds to continue the employee exchange program with the Hyogo prefecture in Japan.

(3) \$515,000 of the department of personnel service account appropriation is provided solely for the development and implementation of a new employment application processing system to: Provide for electronic applications via the internet, provide continuous application acceptance, provide increased public access to job openings, allow for single applications for multiple jobs, and provide for scanning of larger applicant databases as job openings arise.

(4) \$190,000 of the department of personnel service account appropriation is provided solely for the expansion of the executive fellowship program.

(5) \$108,000 of the department of personnel service account appropriation is provided solely for increased funding of the administrative expenses of the combined fund drive.

(6) \$52,000 of the department of personnel service account appropriation is provided solely to implement House Bill No. 5432 (retiree charitable deductions). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(7) The department of personnel has the authority to charge agencies for expenses associated with converting its payroll/personnel computer system to accommodate the year 2000 date change and to implement plan 3 of the public employees' retirement system. Funding to cover these expenses shall be realized from the agency FICA savings associated with the pretax benefits contributions plan.

Sec. 114. 1999 c 309 s 133 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON HISPANIC AFFAIRS

General Fund—State Appropriation (FY 2000)	\$	216,000
General Fund—State Appropriation (FY 2001)	\$	((225,000))
		<u>234,000</u>
TOTAL APPROPRIATION	\$	((441,000))
		<u>450,000</u>

Sec. 115. 1999 c 309 s 134 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON AFRICAN-AMERICAN AFFAIRS

General Fund—State Appropriation (FY 2000)	\$	190,000
General Fund—State Appropriation (FY 2001)	\$	((188,000))
		<u>197,000</u>
TOTAL APPROPRIATION	\$	((378,000))
		<u>387,000</u>

Sec. 116. 2000 2nd sp.s. c 1 s 119 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF RETIREMENT SYSTEMS—OPERATIONS

Dependent Care Administrative Account—State		
Appropriation	\$	361,000
Department of Retirement Systems Expense Account—		
State Appropriation	\$	((44,608,000))
		<u>44,662,000</u>
TOTAL APPROPRIATION	\$	((44,969,000))
		<u>45,023,000</u>

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

(1) \$92,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute Senate Bill No. 5030 (Washington state patrol surviving spouse retirement). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(2) \$259,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute House Bill No. 1024 (retirement system option). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(3) \$55,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute Senate Bill No. 6012

(investment board fund values). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(4) \$22,000 of the department of retirement systems expense account appropriation is provided solely to implement Senate Bill No. 5432 (PERS retiree charitable deductions). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(5) \$50,000 of the department of retirement systems expense account appropriation is provided solely for the department to prepare and distribute to state employees information about options under the federal tax code for tax-advantaged retirement savings.

(6) \$3,731,000 of the department of retirement systems expense account appropriation is provided solely for the information systems project known as the electronic document image management system. Authority to expend this amount is conditioned on compliance with section 902 of this act.

(7) The department shall adjust the retirement systems administrative rate during the 1999-2001 biennium as necessary to provide for law enforcement officers' and fire fighters' retirement system employer funding for a study of LEOFF plan I medical liabilities by the office of the state actuary.

(8) \$293,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute House Bill No. 2604 (survivor options). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(9) \$2,879,000 of the department of retirement systems expense account appropriation is provided solely to implement Engrossed Substitute Senate Bill No. 6530 (pension enhancements). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(10) \$480,000 of the department of retirement systems expense account appropriation is provided solely for increased charges for services provided by the department of information systems. The two departments shall submit a report on the causes of the increased charges to the office of financial management no later than September 1, 2000.

Sec. 117. 1999 c 309 s 138 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF REVENUE

General Fund—State Appropriation (FY 2000)	\$	69,998,000
General Fund—State Appropriation (FY 2001)	\$	((68,171,000))
		<u>67,156,000</u>
Timber Tax Distribution Account—State		
Appropriation	\$	4,893,000
Waste Education/Recycling/Litter Control—State		
Appropriation	\$	101,000
State Toxics Control Account—State		
Appropriation	\$	67,000
Oil Spill Administration Account—State		

Appropriation	\$	14,000
TOTAL APPROPRIATION	\$	((+143,244,000))
		<u>142,229,000</u>

The appropriations in this section are subject to the following conditions and limitations: The department of revenue shall conduct a study and prepare a report of current state and local taxation of the electricity industry and options for changes to avoid revenue loss, promote competitive neutrality, and encourage economic development within the electricity industry. The study shall include an analysis of the following: (1) Current state and local taxation of the wholesale and retail electricity industry, including tax incidence, rate, base, collection, and allocation of taxes; (2) trends in the wholesale and retail electricity markets affecting current and future revenue streams, including power imports and exports by in-state and out-of-state suppliers; (3) The extent to which existing state and local tax laws may be insufficient to protect revenue streams in light of identifiable wholesale and retail market changes; and (4) whether the tax code is adequate to fairly tax new participants in the market such as brokers, marketers, aggregators, and traders. The department shall conduct the study with support from the utilities and transportation commission, the energy division of the department of community, trade, and economic development, and the state auditor. The department shall consult with energy utilities, retail electric customers, local governments, independent power producers, brokers, marketers, traders, other interested parties, and the chairs and ranking minority members of the committees of the senate and the house of representatives with jurisdiction over electricity issues periodically throughout the course of the study, and shall submit its report to the legislature and the governor by December 1, 1999.

Sec. 118. 2000 2nd sp.s. c 1 s 124 (uncodified) is amended to read as follows:

FOR THE LIQUOR CONTROL BOARD

General Fund—State Appropriation (FY 2000)	\$	1,293,000
General Fund—State Appropriation (FY 2001)	\$	((+284,000))
		<u>1,526,000</u>
Liquor Control Board Construction and Maintenance		
Account—State Appropriation	\$	((9,998,000))
		<u>12,883,000</u>
Liquor Revolving Account—State Appropriation	\$	((+29,422,000))
		<u>130,664,000</u>
TOTAL APPROPRIATION	\$	((+11,997,000))
		<u>146,366,000</u>

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

(1) \$2,804,000 of the liquor revolving account appropriation is provided solely for the agency information technology upgrade. This amount provided in this

subsection is conditioned upon satisfying the requirements of section 902 of this act.

(2) \$105,000 of the liquor revolving account appropriation is provided solely for the implementation of Engrossed Substitute Senate Bill No. 5712 (motel liquor licenses). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(3) \$300,000 of the liquor revolving account appropriation is provided solely for the board to develop a business plan. The board shall provide copies of the plan to the office of financial management and the fiscal committees of the legislature by September 30, 1999.

(4) \$1,985,000 of the liquor control board construction and maintenance account appropriation is provided solely for the operation of the temporary distribution center.

(5) \$53,000 of the liquor revolving account appropriation is provided solely to train new enforcement agents. In cooperation with the board, the criminal justice training commission shall establish a training curriculum that is appropriate for liquor enforcement officers. Nothing in this subsection makes liquor officers eligible for membership in the law enforcement and fire fighters' pension systems.

(6) \$2,885,000 of the liquor control board construction and maintenance account appropriation is provided solely for mandatory redemption of certificates of participation used to finance the distribution center and material handling system.

(7) \$242,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for legal services related to the cigarette tobacco tax enforcement program.

(8) \$925,000 of the liquor revolving account appropriation is provided solely for unanticipated expenditures in contract agency vendor commissions caused by increased sales volume.

Sec. 119. 2000 2nd sp.s. c 1 s 126 (uncodified) is amended to read as follows:

FOR THE MILITARY DEPARTMENT

General Fund—State Appropriation (FY 2000)	\$	10,889,000
General Fund—State Appropriation (FY 2001)	\$	((8,344,000))
		<u>11,648,000</u>
General Fund—Federal Appropriation	\$	((22,148,000))
		<u>22,192,000</u>
General Fund—Private/Local Appropriation	\$	238,000
Enhanced 911 Account—State Appropriation	\$	((19,507,000))
		<u>16,607,000</u>
Disaster Response Account—State Appropriation	\$	((10,157,000))
		<u>12,226,000</u>
Disaster Response Account—Federal Appropriation	\$	((46,699,000))
		<u>42,566,000</u>

Worker and Community Right to Know Fund—State

Appropriation	\$	285,000
TOTAL APPROPRIATION	\$	(+18,267,000)
		<u>116,651,000</u>

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

(1) ~~\$2,470,000 of the general fund—state appropriation for fiscal year 2000 ((is)) and \$3,227,000 of the general fund—state appropriation for fiscal year 2001~~ are provided solely for deposit in the disaster response account to cover costs pursuant to section 402(9) of this act and subsection (2) of this section.

(2) ~~(\$9,855,000)~~ \$8,787,000 of the disaster response account—state appropriation is provided solely for the state share of response and recovery costs associated with federal emergency management agency (FEMA) disaster 1079 (November/December 1995 storms), FEMA disaster 1100 (February 1996 floods), FEMA disaster 1152 (November 1996 ice storm), FEMA disaster 1159 (December 1996 holiday storm), FEMA disaster 1172 (March 1997 floods), FEMA disaster 1252 (1998 northeast counties floods), and FEMA disaster 1255 (Kelso landslide). The military department may, upon approval of the director of the office of financial management, use portions of the disaster response account—state appropriation to offset costs of new disasters occurring before June 30, 2001. The military department is to submit a report quarterly to the office of financial management and the fiscal committees of the house of representatives and senate detailing disaster costs, including: (a) Estimates of total costs; (b) incremental changes from the previous estimate; (c) actual expenditures; (d) estimates of total remaining costs to be paid; and (d) estimates of future payments by biennium. This information is to be displayed by individual disaster, by fund, and by type of assistance.

(3) \$100,000 of the general fund—state fiscal year 2000 appropriation and \$100,000 of the general fund—state fiscal year 2001 appropriation are provided solely for implementation of the conditional scholarship program pursuant to chapter 28B.103 RCW.

(4) \$35,000 of the general fund—state fiscal year 2000 appropriation and \$35,000 of the general fund—state fiscal year 2001 appropriation are provided solely for the north county emergency medical service.

(5) \$302,000 of the disaster response account—state appropriation is provided solely for the costs of activating the national guard during the world trade organization conference in Seattle.

(6) \$4,003,000 of the disaster response account—state appropriation is provided solely for fire mobilization costs.

PART II
HUMAN SERVICES

Sec. 201. 2000 2nd sp.s. c 1 s 201 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES.

(1) Appropriations made in this act to the department of social and health services shall initially be allotted as required by this act. Subsequent allotment modifications shall not include transfers of moneys between sections of this act except as expressly provided in this act, nor shall allotment modifications permit moneys that are provided solely for a specified purpose to be used for other than that purpose, except as expressly provided in subsection (3) of this section.

(2) The department of social and health services shall not initiate any services that will require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for services authorized in this act or in any other legislation providing appropriation authority, and an equal amount of appropriated state general fund moneys shall lapse. Upon the lapsing of any moneys under this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.

(3)(a) The appropriations to the department of social and health services in this act shall be expended for the programs and in the amounts specified herein. However, after May 1, 2000, unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year 2000 among programs after approval by the director of financial management. However, the department shall not transfer state moneys that are provided solely for a specified purpose except as expressly provided in subsection (3)(b) of this section.

(b) After May 1, 2001, after approval by the director of financial management and unless specifically prohibited by this act, the department may transfer moneys among programs, including federal moneys that are provided solely for a specified purpose. However, the department shall not transfer state moneys that are provided for a specified purpose except as expressly provided in subsection (3)(d) of this section.

(c) To the extent that transfers under subsection (3)(a) of this section are insufficient to fund actual expenditures in excess of fiscal year 2000 caseload forecasts and utilization assumptions in the medical assistance, long-term care, foster care, adoption support, voluntary placement, and child support programs, the

department may transfer state moneys that are provided solely for a specified purpose after approval by the director of financial management.

~~((c)) (d) To the extent that transfers under subsection (3)(b) of this section are insufficient to fund actual expenditures in excess of fiscal year 2001 caseload forecasts and utilization assumptions in the medical assistance, long-term care, foster care, adoption support, and child support programs, the department may transfer state moneys that are provided solely for a specified purpose after approval by the director of financial management.~~

(e) The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing prior to approving any allotment modifications.

Sec. 202. 2000 2nd sp.s. c 1 s 202 (uncodified) is amended to read as follows:
**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
 CHILDREN AND FAMILY SERVICES PROGRAM**

General Fund—State Appropriation (FY 2000)	\$	196,694,000
General Fund—State Appropriation (FY 2001)	\$	((214,000,000))
		<u>210,463,000</u>
General Fund—Federal Appropriation	\$	((355,146,000))
		<u>354,027,000</u>
General Fund—Private/Local Appropriation	\$	400,000
Violence Reduction and Drug Enforcement Account—		
State Appropriation	\$	4,194,000
Public Safety and Education Account—		
State Appropriation	\$	457,000
TOTAL APPROPRIATION	\$	((770,891,000))
		<u>766,235,000</u>

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

(1) \$594,000 of the general fund—state appropriation for fiscal year 2000, \$1,964,000 of the general fund—state appropriation for fiscal year 2001, and \$195,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Second Substitute House Bill No. 5557 (the HOPE act) or sections 10 through 29 of Engrossed Second Substitute House Bill No. 1493. If neither bill is enacted by June 30, 1999, the funds shall be provided for:

(a) The department to contract for 10 temporary residential placements, for up to 30 days, for street youth by June 30, 2000, and for 29 temporary residential placements for street youth by June 30, 2001. These street youth ~~((shall be sixteen to eighteen years old who are dependents of the state, and))~~ are persons under the age of eighteen who live outdoors or in other unsafe locations not intended for occupancy by a minor ~~((and whose permanency plan of care does not include return to home or family reunification. The department shall contact the missing children's clearinghouse regarding these youth. The department may approve placements for fourteen and fifteen-year olds who also meet these criteria. Youth~~

~~who receive these placements may receive one or more of the following services: Educational services, vocational training, job readiness assistance, job search assistance, chemical dependency treatment, and counseling)) and who are not residing with a parent or at their legally authorized residence; and~~

(b) For the department to contract for 10 residential placements for dependent youth by June 30, 2000, and for 29 residential placements for youth by June 30, 2001. These youth shall be aged sixteen through eighteen who live outdoors or in unsafe locations not intended for occupancy by a minor, and whose permanency plan does not include return to home or family reunification. These placements may be available to youth up to eighteen years of age. Youth who receive these placements shall receive training related to one or more of the following: Basic education, employment, money management and other skills that will assist the youth in developing independent living skills.

(2) \$2,191,000 of the fiscal year 2000 general fund—state appropriation, \$2,191,000 of the fiscal year 2001 general fund—state appropriation, and \$1,540,000 of the general fund—federal appropriation are provided solely for the category of services titled "intensive family preservation services." The reduction in funds assumed in this section is intended to realign the appropriation with actual service levels and expenditures and is not intended to reduce the current level of intensive family preservation services across the state.

(3) \$670,925 of the general fund—state fiscal year 2000 appropriation and \$670,925 of the general fund—state fiscal year 2001 appropriation are provided to contract for the operation of one pediatric interim care facility. The facility shall provide residential care for up to thirteen children through two years of age. Seventy-five percent of the children served by the facility must be in need of special care as a result of substance abuse by their mothers. The facility shall also provide on-site training to biological, adoptive, or foster parents. The facility shall provide at least three months of consultation and support to parents accepting placement of children from the facility. The facility may recruit new and current foster and adoptive parents for infants served by the facility. The department shall not require case management as a condition of the contract.

(4) \$513,000 of the general fund—state fiscal year 2000 appropriation and \$513,000 of the general fund—state fiscal year 2001 appropriation are provided for up to three nonfacility-based programs for the training, consultation, support, and recruitment of biological, foster, and adoptive parents of children through age three in need of special care as a result of substance abuse by their mothers, except that each program may serve up to three medically fragile nonsubstance-abuse-affected children. In selecting nonfacility-based programs, preference shall be given to programs whose federal or private funding sources have expired or that have successfully performed under the existing pediatric interim care program.

(5) \$140,000 of the fiscal year 2001 state general fund appropriation is provided solely for the department to establish and maintain a toll-free telephone number and an electronic on-line system for communication of information

regarding child day-care centers and family day-care providers. This number shall be available during standard business hours, and during nonbusiness hours callers shall be able to leave messages. The number shall be published in reasonably available printed and electronic media. The number shall be easily identifiable as a method that callers may use to determine whether a day-care provider is licensed, determine whether a day-care provider is in good standing regarding licensing requirements, determine the general nature of enforcement actions against the provider, obtain information on how to report suspected or observed noncompliance with licensing requirements, obtain information on how to report health, safety, and welfare concerns, receive follow-up assistance including information on the office of the family and children's ombudsman, and receive referral information on other agencies or entities that may be of further assistance to the caller. Upon request, the department shall disclose the receipt, general nature, current status and resolution of all complaints on record with the department after the effective date of this section against a child day-care center or family day-care provider that result in an enforcement action. The department shall make available to the public during business hours all inspection reports and notices of enforcement actions involving child day-care centers and family day-care providers consistent with chapter 42.17 RCW. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider.

(6) \$2,311,000 of the fiscal year 2000 general fund—state appropriation, \$2,370,000 of the fiscal year 2001 general fund—state appropriation, and \$4,182,000 of the violence reduction and drug enforcement account appropriation are provided solely for the family policy council and community public health and safety networks.

(7) \$90,000 of the general fund—state appropriation for fiscal year 2000, \$91,000 of the general fund—state appropriation for fiscal year 2001, and \$64,000 of the general fund—federal appropriation are provided solely to implement Substitute House Bill No. 1619 (foster parent reimbursements). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(8) \$121,000 of the general fund—state appropriation for fiscal year 2000, \$101,000 of the general fund—state appropriation for fiscal year 2001, and \$80,000 of the general fund—federal appropriation are provided solely for the implementation of Substitute House Bill No. 1668 (foster parent training). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(9) \$213,000 of the general fund—state appropriation for fiscal year 2000, \$93,000 of the general fund—state appropriation for fiscal year 2001, and \$78,000 of the general fund—federal appropriation are provided solely to implement Second Substitute House Bill No. 1692 or sections 1 through 7 of Senate Bill No. 5127 (child abuse investigations). If neither of these bills is enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(10) \$348,000 of the general fund—federal appropriation is provided solely for the department to determine the character of persons who have unsupervised access to children in care, including exempt child care providers defined in RCW 74.15.020, through a conviction record and pending charges check at the Washington state patrol, in order to authorize payment for care. If a check through the Washington state patrol or the federal bureau of investigation has been completed within the preceding year of the department's request, the department may rely upon the previous check for persons who confirm no offenses have been committed within the last year. Further, the appropriation is provided to the department to implement a waiver process and administrative hearing review process for exempt child care providers whose background check may otherwise disqualify them. This subsection does not establish any obligation, duty, or cause of action.

(11) \$457,000 of the public safety and education account is provided to train service providers in serving and advocating for domestic violence victims with disabilities, monitor batterer treatment programs for compliance with certification standards, fund domestic violence services to underserved populations, and support the fatality review process.

(12) \$2,214,000 of the general fund—state appropriation for fiscal year 2001 and \$686,000 of the general fund—federal appropriation are provided solely for an increase in the combined adoption support and foster care caseloads. Of the amounts provided in this subsection, \$1,107,000 shall not be expended if the total expenditures for these programs or per capita expenditures for fiscal year 2000 or for the first quarter of fiscal year 2001 for any portion of these caseloads exceed the November 1999 expenditure forecast and the department does not provide a detailed report comparing the forecasted and actual expenditures per case by rate payment category and the reasons for each overexpenditure by December 1, 2000, to the appropriate policy and fiscal committees of the legislature.

(13) \$100,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for allocation, without deduction for administrative costs by the department, to the educational institute for rural families to ensure continued seasonal child care in region two of the department. These funds are not intended to supplant the contracted rate of reimbursement or the total reimbursement for the provision of seasonal child care by this provider.

(14) \$174,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for a foster parent retention pilot program. This program will be directed at foster parents caring for children who act out sexually, as described in House Bill No. 2709 (foster parent retention program).

(15) The amounts provided in this section are sufficient to implement Engrossed Second Substitute Senate Bill No. 6400 (domestic violence).

Sec. 203. 2000 2nd sp.s. c 1 s 203 (uncodified) is amended to read as follows:
**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
JUVENILE REHABILITATION PROGRAM**

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 2000)	\$	35,379,000
General Fund—State Appropriation (FY 2001)	\$	((38,283,000))
		<u>35,408,000</u>
General Fund—Federal Appropriation	\$	((9,732,000))
		<u>9,884,000</u>
General Fund—Private/Local Appropriation	\$	380,000
Juvenile Accountability Incentive Account—Federal Appropriation	\$	6,548,000
Public Safety and Education Account—State Appropriation	\$	10,700,000
Violence Reduction and Drug Enforcement Account— State Appropriation	\$	((20,977,000))
		<u>19,871,000</u>
TOTAL APPROPRIATION	\$	((+21,999,000))
		<u>118,170,000</u>

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

(a) \$666,000 of the violence reduction and drug enforcement account appropriation is provided solely for deposit in the county criminal justice assistance account for costs to the criminal justice system associated with the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county adult court costs associated with the implementation of chapter 338, Laws of 1997 and shall be distributed in accordance with RCW 82.14.310.

(b) \$5,742,000 of the violence reduction and drug enforcement account appropriation is provided solely for the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county impacts associated with the implementation of chapter 338, Laws of 1997 and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula.

(c) \$1,161,000 of the general fund—state appropriation for fiscal year 2000, \$1,162,000 of the general fund—state appropriation for fiscal year 2001, \$5,000,000 of the violence reduction and drug enforcement account appropriation, and \$177,000 of the juvenile accountability incentive account—federal appropriation are provided solely to implement community juvenile accountability grants pursuant to chapter 338, Laws of 1997 (juvenile code revisions). Funds provided in this subsection may be used solely for community juvenile accountability grants, administration of the grants, and evaluations of programs funded by the grants.

(d) \$2,419,000 of the violence reduction and drug enforcement account appropriation is provided solely to implement alcohol and substance abuse treatment programs for locally committed offenders. The juvenile rehabilitation

administration shall award these moneys on a competitive basis to counties that submitted a plan for the provision of services approved by the division of alcohol and substance abuse. The juvenile rehabilitation administration shall develop criteria for evaluation of plans submitted and a timeline for awarding funding and shall assist counties in creating and submitting plans for evaluation.

(e) \$100,000 of the general fund—state appropriation for fiscal year 2000 and \$100,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for juvenile rehabilitation administration to contract with the institute for public policy for responsibilities assigned in chapter 338, Laws of 1997 (juvenile code revisions).

(f) The juvenile rehabilitation administration, in consultation with the juvenile court administrators, may agree on a formula to allow the transfer of funds among amounts appropriated for consolidated juvenile services, community juvenile accountability act grants, the chemically dependent disposition alternative, and the special sex offender disposition alternative.

(g) \$75,000 of the general fund—state appropriation for fiscal year 2000 and \$100,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for a contract for expanded services of the teamchild project.

(h) \$75,000 of the general fund—state appropriation for fiscal year 2000 is provided solely for the Skagit county delinquency prevention project.

(i) \$350,000 of the general fund—state appropriation for fiscal year 2000, \$735,000 of the general fund—state appropriation for fiscal year 2001, \$229,000 of the general fund—federal appropriation, and \$673,000 of the violence reduction and drug enforcement account appropriation are provided solely to increase payment rates for contracted service providers. It is the legislature's intent that these amounts be used primarily to increase compensation for persons employed in direct, front-line service delivery.

(j) No later than January 1, 2001, the Washington state institute for public policy shall report to the legislature on the outcomes of low and moderate risk juvenile rehabilitation administration offenders who were released without supervision compared to those who were released with supervision. The study shall compare both the recidivism rates as well as the nature of any new criminal offenses each group commits. The legislature shall consider the results of this study in making any decision to continue or revise parole services for this group of offenders.

(k) \$16,000 of the general fund—state appropriation for fiscal year 2000 and \$16,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Substitute Senate Bill No. 5214 (firearms on school property). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse. The amounts provided in this subsection are intended to provide funding for county impacts associated with the implementation of Substitute Senate Bill No. 5214 and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula.

(l) \$3,440,000 of the general fund—state appropriation for fiscal year 2000 and \$3,441,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. The department shall not retain any portion of these funds to cover administrative or any other departmental costs. The department, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per-petition processing costs nor shall it penalize counties with lower than average per-petition processing costs.

(m) \$6,000,000 of the public safety and education account—state appropriation is provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. To the extent that distributions made under (l) and (m) of this subsection and pursuant to section 801 of this act exceed actual costs of processing truancy, children in need of services, and at-risk youth petitions, the department, in consultation with the respective juvenile court administrator and the county, may approve expenditure of funds provided in this subsection on other costs of the civil or criminal justice system. When this occurs, the department shall notify the office of financial management and the legislative fiscal committees. The department shall not retain any portion of these funds to cover administrative or any other departmental costs. The department, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per petition processing costs nor shall it penalize counties with lower than average per petition processing costs.

(n) \$4,700,000 of the public safety and education account appropriation is provided solely for distribution to counties pursuant to stipulation and agreed-to order of dismissal in Thurston county superior court case number 98-2-02458. The department shall not retain any portion of these funds to cover administrative or any other departmental costs.

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

(p) Each quarter during the 1999-01 fiscal biennium, each county shall report the number of petitions processed and the total actual costs of processing the petitions in each of the following categories: Truancy, children in need of services, and at-risk youth. Counties shall submit the reports to the department no later than 45 days after the end of the quarter. The department shall forward this information to the chair and ranking minority member of the house of representatives appropriations committee and the senate ways and means committee no later than

60 days after a quarter ends. These reports are deemed informational in nature and are not for the purpose of distributing funds.

(q) \$31,000 of the violence reduction and drug enforcement account appropriation is provided solely for the evaluation of the juvenile offender co-occurring disorder pilot program implemented pursuant to section 204 of this 2000 act.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2000)	\$	46,815,000
General Fund—State Appropriation (FY 2001)	\$	((48,061,000))
		<u>44,022,000</u>
General Fund—Private/Local Appropriation	\$	740,000
Violence Reduction and Drug Enforcement Account—		
State Appropriation	\$	((15,282,000))
		<u>14,645,000</u>
TOTAL APPROPRIATION	\$	((10,898,000))
		<u>106,222,000</u>

The appropriations in this subsection are subject to the following conditions and limitations: \$37,000 of the general fund—state appropriation for fiscal year 2000 and \$74,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to increase payment rates for contracted service providers. It is the legislature’s intent that these amounts be used primarily to increase compensation for persons employed in direct, front-line service delivery.

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2000)	\$	1,419,000
General Fund—State Appropriation (FY 2001)	\$	1,421,000
General Fund—Federal Appropriation	\$	317,000
Juvenile Accountability Incentive Account—Federal		
Appropriation	\$	1,100,000
Violence Reduction and Drug Enforcement Account—		
State Appropriation	\$	421,000
TOTAL APPROPRIATION	\$	4,678,000

Sec. 204. 2000 2nd sp.s. c 1 s 205 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
MENTAL HEALTH PROGRAM

(1) COMMUNITY SERVICES/REGIONAL SUPPORT NETWORKS

General Fund—State Appropriation (FY 2000)	\$	165,723,000
General Fund—State Appropriation (FY 2001)	\$	((179,190,000))
		<u>184,775,000</u>
General Fund—Federal Appropriation	\$	((305,644,000))
		<u>311,421,000</u>
General Fund—Local Appropriation	\$	1,827,000
Health Services Account Appropriation	\$	1,225,000

TOTAL APPROPRIATION \$ ((653,609,000))
664,971,000

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

(a) Regional support networks shall use portions of the general fund—state appropriation for implementation of working agreements with the vocational rehabilitation program which will maximize the use of federal funding for vocational programs.

(b) From the general fund—state appropriations in this subsection, the secretary of social and health services shall assure that regional support networks reimburse the aging and adult services program for the general fund—state cost of medicaid personal care services that enrolled regional support network consumers use because of their psychiatric disability.

(c) \$711,000 of the general fund—state appropriation for fiscal year 2000 and \$757,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to directly reimburse eligible providers for the medicaid share of mental health services provided to persons eligible for both medicaid and medicare.

(d) \$64,000 of the general fund—state appropriation for fiscal year 2000 and \$150,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for regional support networks to participate in prerelease treatment planning and to conduct involuntary commitment evaluations, as required by Substitute Senate Bill No. 5011 (mentally ill offenders). If the bill is not enacted by June 30, 1999, these amounts shall lapse.

(e) \$5,000 of the general fund—state appropriation for fiscal year 2000 and \$466,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for case management and other community support services, as authorized by Substitute Senate Bill No. 5011 (mentally ill offenders). If the bill is not enacted by June 30, 1999, these amounts shall lapse.

(f) Within funds appropriated in this subsection, the department shall contract with the Clark county regional support network for development and operation of a pilot project demonstrating new and collaborative methods for providing intensive mental health services in the school setting for severely emotionally disturbed children who are medicaid eligible. Project services are to be delivered by teachers and teaching assistants who qualify as, or who are under the supervision of, mental health professionals meeting the requirements of WAC 275-57. The department shall increase medicaid payments to the regional support network by the amount necessary to cover the necessary and allowable costs of the demonstration, not to exceed the upper payment limit specified for the regional support network in the department’s medicaid waiver agreement with the federal government. The regional support network shall provide the department with (i) periodic reports on project service levels, methods, and outcomes; (ii) protocols, guidelines, and handbooks suitable for use by other school districts and regional support networks seeking to replicate the pilot project’s approach; and (iii)

intergovernmental transfer equal to the state share of the increased medicaid payment provided for operation of this project.

(g) \$47,000 of the general fund—state appropriation for fiscal year 2000 and \$47,000 of the general fund—state appropriation for fiscal year 2001 are provided for implementation of Substitute Senate Bill No. 5214 (firearms on school premises). If the bill is not enacted by June 30, 1999, the amounts provided shall lapse.

(h) The general fund—state appropriation for fiscal year 2001 includes \$1,891,000 to replace federal funding for outpatient services which is no longer available due to the reduction in the federal medical assistance percentage. The department shall distribute these additional state funds among the regional support networks according to each regional support network's capitation rate by eligibility category.

(i) The appropriations in this subsection include an increase in funding for medicaid outpatient services as a result of the forecasted increase in the number of persons eligible for medicaid over the number previously budgeted. The department shall distribute these additional appropriations among the regional support networks according to each regional support network's capitation rate by eligibility category.

(j) The health services account appropriation is provided solely for implementation of strategies which the department and the affected regional support networks conclude will best assure continued availability of community-based inpatient psychiatric services in all areas of the state. Such strategies may include, but are not limited to, emergency contracts for continued operation of inpatient facilities otherwise at risk of closure because of demonstrated, disproportionate uncompensated care; start-up grants for development of evaluation and treatment facilities; and increases in the rate paid for inpatient psychiatric services for medically indigent and/or general assistance for the unemployed patients. The funds provided in this subsection must be: (i)(A) Prioritized for use in those areas of the state which are at greatest risk of lacking sufficient inpatient psychiatric treatment capacity; (B) prioritized for use by those hospitals which do not receive low-income disproportionate share hospital payments as of the date of application for funding; (C) matched on a one-quarter local, three-quarters state basis by funding from the regional support network or networks in the area in which the funds are expended; and (D) used to support strategies which can be sustained during the 2001-03 biennium at a state cost no more than 100 percent greater than the amount provided in this subsection. Payments from the amount provided in this subsection shall not be made to any provider that has not agreed ~~((; (ii)(A)))~~ that, except for prospective rate increases, the payment shall offset, on a dollar-for-dollar basis, any liability that may be established against the state for the rate of state reimbursement for inpatient psychiatric care ~~((; and (B) that the provider will maintain or enhance its inpatient psychiatric treatment capacity throughout the period ending June 30, 2001, or for~~

~~the duration of the funding, whichever is later~~)). The funds provided in this subsection shall not be considered "available resources" as defined in RCW 71.24.025 and are not subject to the distribution formula established pursuant to RCW 71.24.035.

(k) \$1,000,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for implementation of Substitute House Bill No. 2663 (atypical antipsychotic medications). If Substitute House Bill No. 2663 is not enacted by June 30, 2000, the amount provided in this subsection shall lapse. Prior to implementing the projects established in the bill, the department shall report to the appropriate policy and fiscal committees of the legislature on proposed medication delivery and monitoring systems and arrangements for obtaining manufacturer discounts or rebates. No more than \$175,000 of the funds provided in this subsection may be used for state and contractor start-up, evaluation, and administration of the projects, and no more than \$100,000 of that amount may be for ongoing costs which continue beyond fiscal year 2001. The department may transfer and allot the state component of such administrative costs to its mental health program support subprogram. The funds provided in this subsection shall not be considered "available resources" as defined in RCW 71.24.025 and are not subject to the distribution formula established pursuant to RCW 71.24.035.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2000)	\$	69,797,000
General Fund—State Appropriation (FY 2001)	\$	((72,279,000))
		<u>71,919,000</u>
General Fund—Federal Appropriation	\$	((141,129,000))
		<u>140,780,000</u>
General Fund—Private/Local Appropriation	\$	29,809,000
TOTAL APPROPRIATION	\$	((313,014,000))
		<u>312,305,000</u>

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

(a) The state mental hospitals may use funds appropriated in this subsection to purchase goods and supplies through hospital group purchasing organizations when it is cost-effective to do so.

(b) The mental health program at Western state hospital shall continue to use labor provided by the Tacoma prerelease program of the department of corrections.

(c) The department shall use general fund—local appropriations in this subsection to establish a third-party revenue incentive pool, which shall be used for staff-initiated projects which will increase the quality of care at the state hospitals. For fiscal year 2000, the incentive pool shall be (i) the first \$200,000 by which revenues from third-party payers exceed \$28,000,000; and (ii) fifty percent of any amounts beyond \$28,200,000, up to a maximum of \$500,000. For fiscal year 2001, the incentive pool shall be (iii) the first \$350,000 by which third-party revenues exceed \$28,480,000; and (iv) fifty percent of any amounts beyond

\$28,830,000, up to a maximum of \$700,000. For purposes of this subsection, "third-party revenues" does not include disproportionate share hospital payments or the federal share of salaries and benefit allocations. The department may establish separate incentive pools for each hospital. The department may also divide the annual revenue target into quarterly goals, and make funds available from the incentive pool on a quarterly basis.

(d) \$444,000 of the general fund—state appropriation for fiscal year 2000, \$1,866,000 of the general fund—state appropriation for fiscal year 2001, \$196,000 of the general fund—private/local appropriation, and \$157,000 of the general fund—federal appropriation are provided for improved, more specialized care for persons with developmental disabilities during their treatment for a psychiatric illness at the state hospitals.

(e) By March 1, 2001, the department shall modify the treatment approach on at least two state hospital wards to more cost-effective models of care. The models shall place greater emphasis upon community transition, or upon long-term support, than upon intensive psychiatric rehabilitation for residents for whom such an alternative model of care is determined appropriate by their treatment team. The alternative treatment approaches may include closure of a ward and use of hospital staff to provide transitional community services, in coordination with the regional support networks.

(3) CIVIL COMMITMENT

General Fund—State Appropriation (FY 2000)	\$	10,895,000
General Fund—State Appropriation (FY 2001)	\$	((11,940,000))
		<u>13,275,000</u>
Violence Reduction and Drug Enforcement		
Account—State Appropriation	\$	14,000,000
TOTAL APPROPRIATION	\$	((36,835,000))
		<u>38,170,000</u>

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

(a) The department shall report to the fiscal committees of the legislature by October 1, 1999, on plans for increasing the efficiency of staffing patterns at the civil commitment center sufficiently to operate within authorized staffing and expenditure levels.

(b) The violence reduction and drug enforcement account appropriation is provided solely for deposit into the state building and construction account for design and construction of a new special commitment center facility (capital project 00-2-001). These funds shall not be transferred for other purposes as otherwise provided in section 201(3)(b) of this act. The amount provided in this subsection is subject to the review and allotment procedures under sections 902 and 903 of chapter 379, Laws of 1999. In accordance with section 909 of chapter 379, Laws of 1999, the department of corrections is responsible for project management.

(4) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2000)	\$	444,000
General Fund—State Appropriation (FY 2001)	\$	443,000
General Fund—Federal Appropriation	\$	3,282,000
TOTAL APPROPRIATION	\$	4,169,000

(5) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2000)	\$	2,612,000
General Fund—State Appropriation (FY 2001)	\$	((2,706,000))
		<u>2,688,000</u>
General Fund—Federal Appropriation	\$	((3,227,000))
		<u>3,220,000</u>
TOTAL APPROPRIATION	\$	((8,545,000))
		<u>8,520,000</u>

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

(a) By December 1, 1999, the department shall provide the fiscal committees of the legislature with an independent assessment of options for increasing the efficiency and effectiveness of current systems and organizational structures for billing third-party payers for hospital services.

(b) \$100,000 of the general fund—state appropriation for fiscal year 2000, \$100,000 of the general fund—state appropriation for fiscal year 2001, and \$120,000 of the general fund federal appropriation are provided solely for the institute for public policy to evaluate the impacts of Substitute Senate Bill No. 5011 (mentally ill offenders), and of chapter 297, Laws of 1998 (commitment of mentally ill persons). If Substitute Senate Bill No. 5011 is not enacted by June 30, 1999, one-half of each of these amounts shall lapse.

**Sec. 205. 2000 2nd sp.s. c 1 s 206 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
DEVELOPMENTAL DISABILITIES PROGRAM**

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 2000)	\$	185,473,000
General Fund—State Appropriation (FY 2001)	\$	((205,593,000))
		<u>212,352,000</u>
General Fund—Federal Appropriation	\$	((325,535,000))
		<u>326,295,000</u>
Health Services Account—State Appropriation	\$	262,000
TOTAL APPROPRIATION	\$	((716,863,000))
		<u>724,382,000</u>

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

(a) The health services account appropriation and \$127,000 of the general fund—federal appropriation are provided solely for health care benefits for home

care workers with family incomes below 200 percent of the federal poverty level who are employed through state contracts for twenty hours per week or more. Premium payments for individual provider home care workers shall be made only to the subsidized basic health plan. Home care agencies may obtain coverage either through the basic health plan or through an alternative plan with substantially equivalent benefits.

(b) \$3,100,000 of the general fund—state appropriation for fiscal year 2000, \$4,650,000 of the general fund—state appropriation for fiscal year 2001, and \$8,250,000 of the general fund—federal appropriation are provided solely to increase services and supports for people with developmental disabilities. These funds shall be expended in accordance with priorities established by the stakeholder advisory group established in accordance with chapter 216, Laws of 1998 (developmental disabilities), except that (i) at least 50 percent of these amounts must be used to increase the number of people receiving residential, employment, family support, or other direct services; (ii) the services and supports must be designed and implemented such that the cost of continuing them in the 2001-03 biennium does not exceed \$19.2 million, of which no more than \$9.3 million is from state funds; and (iii) strong consideration shall be given to the need for increased wages for direct care workers in contracted residential programs.

(c) \$413,000 of the general fund—state appropriation for fiscal year 2000, \$1,172,000 of the general fund—state appropriation for fiscal year 2001, and \$694,000 of the general fund—federal appropriation are provided solely for employment, or other day activities and training programs, for young people who complete their high school curriculum in 1999 or 2000.

(d) \$1,919,000 of the general fund—state appropriation for fiscal year 2000, \$6,673,000 of the general fund—state appropriation for fiscal year 2001, and \$7,361,000 of the general fund—federal appropriation are provided solely to improve services for persons with developmental disabilities who would otherwise be at risk of needing involuntary commitment to or prolonged treatment at state psychiatric hospitals. The department shall use these funds to enhance the community crisis response system managed by regional support networks, improve crisis prevention and stabilization services through the developmental disabilities community services system, and expand community residential capacity for persons with developmental disabilities who are ready for discharge from state psychiatric hospitals. Funding for community residential capacity is sufficient to move a biennium total of 48 patients out of the state hospitals at a reasonable pace by June 30, 2001. The department shall manage the intensity of services provided so that the average cost per day does not exceed \$300 per person placed in this expanded community residential capacity. The department shall report to the appropriate committees of the legislature progress towards implementing this subsection after each calendar quarter. The legislature finds that, in addition to the appropriations in this subsection for improvements in services to persons with developmental disabilities who are committed to the custody of the secretary under

chapter 71.05 RCW, it is necessary to study long-term treatment alternatives and their legal, fiscal, and policy implications. Therefore, the department shall provide a report to the ways and means committee of the senate and the appropriations committee of the house of representatives by December 1, 2000, containing options and recommendations for secure treatment programs. The report shall identify various treatment models that could be implemented and various types and locations of secure facilities, both state-owned and leased, in which programs could be sited, together with the department's recommendations. The report shall evaluate the potential for siting such programs on the grounds of existing state residential habilitation centers. The report shall also include analysis of advantages and disadvantages associated with contracting for some or all of the new program options identified. The report shall evaluate the options based on short-term and long-term costs, client and community security, efficiency of coordination with other service delivery systems, and how they address specific legal issues. In developing this report, the department shall invite participation by representatives of the Washington protection and advocacy system (WPAS), and shall include in the report WPAS' position on options and recommendations submitted by the department and any additional recommendations made by WPAS. The legislature recognizes a need to improve long-term services provided to individuals with developmental disabilities who are undergoing involuntary treatment under chapter 71.05 RCW. The legislature is committed to providing resources necessary to address issues in the U.S. District Court case of *Allen v. Western State Hospital*.

(e) \$513,000 of the general fund—state appropriation for fiscal year 2000, \$1,421,000 of the general fund—state appropriation for fiscal year 2001, and \$2,033,000 of the general fund—federal appropriation are provided to develop and operate secure residential and day program placements for persons who seem likely to pose a significant risk to the public safety if their current residential arrangement were to continue.

(f) \$209,000 of the general fund—state appropriation for fiscal year 2000, \$664,000 of the general fund—state appropriation for fiscal year 2001, and \$939,000 of the general fund—federal appropriation are provided to increase wages as required by Initiative No. 688 (state minimum wage) for contracted adult family homes, adult residential care facilities, hourly and daily family support providers, and hourly attendant care providers.

(g) \$1,978,000 of the general fund—state appropriation for fiscal year 2000, \$4,475,000 of the general fund—state appropriation for fiscal year 2001, and \$6,989,000 of the general fund—federal appropriation are provided solely to increase compensation for individual and agency home care workers. Payments to individual providers are to be increased from \$6.18 per hour to \$6.68 per hour on July 1, 1999, and to \$7.18 per hour on July 1, 2000. Payments to agency providers are to be increased to \$11.97 per hour on July 1, 1999, and to \$12.62 per hour on July 1, 2000. All but 14 cents per hour of the July 1, 1999, increase to agency providers, and all but 15 cents per hour of the additional July 1, 2000,

increase is to be used to increase wages for direct care workers. The appropriations in this subsection also include the funds needed for the employer share of unemployment and social security taxes on the amount of the increase.

(h) Within amounts appropriated in this subsection, the developmental disabilities program shall contract for a pilot program to test an alternative service delivery model for persons with autism. The department must use a competitive process to determine the site of the pilot. The pilot program must be time-limited and subject to an evaluation of client outcomes to determine the effectiveness and efficiency of the pilot program compared to the standard service model for persons with autism.

(i) \$500,000 of the general fund—state appropriation for fiscal year 2001 and \$160,000 of the general fund—federal appropriation are provided solely for increased family support services and related case management support.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2000)	\$	66,076,000
General Fund—State Appropriation (FY 2001)	\$	((67,478,000))
		<u>66,904,000</u>
General Fund—Federal Appropriation	\$	((146,482,000))
		<u>145,834,000</u>
General Fund—Private/Local Appropriation	\$	10,227,000
TOTAL APPROPRIATION	\$	((290,263,000))
		<u>289,041,000</u>

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2000)	\$	2,431,000
General Fund—State Appropriation (FY 2001)	\$	2,435,000
General Fund—Federal Appropriation	\$	2,080,000
TOTAL APPROPRIATION	\$	6,946,000

(4) SPECIAL PROJECTS

General Fund—Federal Appropriation	\$	12,007,000
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Sec. 206. 2000 2nd sp.s. c 1 s 207 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—AGING AND ADULT SERVICES PROGRAM

General Fund—State Appropriation (FY 2000)	\$	446,025,000
General Fund—State Appropriation (FY 2001)	\$	((475,043,000))
		<u>477,355,000</u>
General Fund—Federal Appropriation	\$	((979,301,000))
		<u>977,522,000</u>
General Fund—Private/Local Appropriation	\$	3,910,000
Health Services Account—State Appropriation	\$	((2,104,000))
		<u>3,167,000</u>
TOTAL APPROPRIATION	\$	((1,906,383,000))
		<u>1,907,979,000</u>

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

(1) The entire health services account appropriation, (~~(\$2,118,000)~~) \$4,756,000 of the general fund—federal appropriation, \$923,000 of the general fund—state appropriation for fiscal year 2000, and (~~(\$958,000)~~) \$1,019,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for health care benefits for home care workers who are employed through state contracts for at least twenty hours per week. Premium payments for individual provider home care workers shall be made only to the subsidized basic health plan. Home care agencies may obtain coverage either through the basic health plan or through an alternative plan with substantially equivalent benefits.

(2) \$1,640,000 of the general fund—state appropriation for fiscal year 2000 and \$1,640,000 of the general fund—state appropriation for fiscal year 2001, plus the associated vendor rate increase for each year, are provided solely for operation of the volunteer chore services program.

(3) For purposes of implementing Engrossed Second Substitute House Bill No. 1484 (nursing home payment rates), the weighted average nursing facility payment rate for fiscal year 2000 shall be no more than \$10.85 for the capital portion of the rate and no more than \$108.20 for the noncapital portion of the rate. For fiscal year 2001, the weighted average nursing facility payment rate shall be no more than \$11.44 for the capital portion of the rate and no more than (~~(\$111.21)~~) \$111.84 for the noncapital portion of the rate. These rates include vendor rate increases, but exclude nurse's aide training.

(4) In addition to the rates set forth in subsection (3), \$286,000 of the general fund—state appropriation for fiscal year 2000 and \$310,000 of the general fund—federal appropriation are provided solely for supplemental rate adjustments for certain nursing facilities. In accordance with RCW 74.46.431, the department shall use these funds to apply an additional economic trends and conditions adjustment factor to the rate of any facility whose total rate allocation would otherwise be less than its April 1, 1999, total rate, adjusted for case-mix changes. This supplemental adjustment factor shall be the percentage by which the facility's April 1, 1999, rate would otherwise exceed the rate calculated in accordance with chapter 74.46 RCW and subsection (3) of this section, except that (a) no adjustment shall be provided for any amounts by which a facility's rate is lower due to a reduction in its facility-average medicaid case-mix score; and (b) the adjustment factor shall be reduced proportionately for all facilities by the percentage by which total supplemental payments would otherwise exceed the funds provided for such payments in this subsection. This subsection applies only to rates paid for services provided between July 1, 1999, and March 31, 2000.

(5) \$50,000 of the general fund—state appropriation for fiscal year 2000 and \$50,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for payments to any nursing facility licensed under chapter 18.51 RCW which meets all of the following criteria: (a) The nursing home entered into an

arm's length agreement for a facility lease prior to January 1, 1980; (b) the lessee purchased the leased nursing home after January 1, 1980; and (c) the lessor defaulted on its loan or mortgage for the assets of the home after January 1, 1991, and prior to January 1, 1992. Payments provided pursuant to this subsection shall not be subject to the settlement, audit, or rate-setting requirements contained in chapter 74.46 RCW.

(6) Funds are appropriated in this section to increase compensation for individual and for agency home care providers. Payments to individual home care providers are to be increased from \$6.18 per hour to \$6.68 per hour on July 1, 1999, and to \$7.18 per hour on July 1, 2000. Payments to agency providers are to increase to \$11.97 per hour on July 1, 1999, and to \$12.62 per hour on July 1, 2000. All but 14 cents per hour of the July 1, 1999, increase to agency providers, and all but 15 cents per hour of the additional July 1, 2000, increase is to be used to increase wages for direct care workers. The appropriations in this subsection also include the funds needed for the employer share of unemployment and social security taxes on the amount of the increase.

(7) \$200,000 of the general fund—state appropriation for fiscal year 2000, \$80,000 of the general fund—state appropriation for fiscal year 2001, and \$280,000 of the general fund—federal appropriation are provided solely for enhancement and integration of existing management information systems to (a) provide data at the local office level on service utilization, costs, and recipient characteristics; and (b) reduce the staff time devoted to data entry.

(8) The department of social and health services shall provide access and choice to consumers of adult day health services for the purposes of nursing services, physical therapy, occupational therapy, and psychosocial therapy. Adult day health services shall not be considered a duplication of services for persons receiving care in long-term care settings licensed under chapter 18.20, 72.36, or 70.128 RCW.

(9) \$1,452,000 of the general fund—state appropriation for fiscal year 2000, \$1,528,000 of the general fund—state appropriation for fiscal year 2001, and \$2,980,000 of the general fund—federal appropriation are provided solely for implementation of Second Substitute House Bill No. 1546 (in-home care services). If Second Substitute House Bill No. 1546 is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(10) \$610,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for implementation of Substitute House Bill No. 2454 (caregiver support). If Substitute House Bill No. 2454 is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(11) \$8,000 of the general fund—state appropriation for fiscal year 2000, \$131,000 of the general fund—state appropriation for fiscal year 2001, and \$139,000 of the general fund—federal appropriation are provided solely for implementation of Substitute House Bill No. 2637 (background checks). If the bill

is not enacted by June 30, 2000, the amounts provided in this subsection shall lapse.

**Sec. 207. 2000 2nd sp.s. c 1 s 208 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ECONOMIC SERVICES PROGRAM**

General Fund—State Appropriation (FY 2000)	\$	427,742,000
General Fund—State Appropriation (FY 2001)	\$	((410,913,000))
		<u>421,371,000</u>
General Fund—Federal Appropriation	\$	((1,229,774,000))
		<u>1,226,044,000</u>
General Fund—Private/Local Appropriation	\$	30,807,000
TOTAL APPROPRIATION	\$	((2,099,236,000))
		<u>2,105,964,000</u>

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

(1) \$284,083,000 of the general fund—state appropriation for fiscal year 2000, \$268,114,000 of the general fund—state appropriation for fiscal year 2001, \$1,140,342,000 of the general fund—federal appropriation, and \$28,371,000 of the general fund—local appropriation are provided solely for the WorkFirst program and child support operations. WorkFirst expenditures include TANF grants, diversion services, subsidized child care, employment and training, other WorkFirst related services, allocated field services operating costs, and allocated economic services program administrative costs. Within the amounts provided in this subsection, the department shall:

(a) Continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Valid outcome measures of job retention and wage progression shall be developed and reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after 12 months, 24 months, and 36 months. An increased attention to job retention and wage progression is necessary to emphasize the legislature’s goal that the WorkFirst program succeed in helping recipients gain long-term economic independence and not cycle on and off public assistance. The wage progression measure shall report the median percentage increase in quarterly earnings and hourly wage after 12 months, 24 months, and 36 months. The wage progression report shall also report the percent with earnings above one hundred percent and two hundred percent of the federal poverty level. The report shall compare former WorkFirst participants with similar workers who did not participate in WorkFirst. The department shall also report percentage of families who have returned to temporary assistance for needy families after 12 months, 24 months, and 36 months.

(b) Develop informational materials that educate families about the difference between cash assistance and work support benefits. These materials must explain, among other facts, that the benefits are designed to support their employment, that

there are no time limits on the receipts of work support benefits, and that immigration or residency status will not be affected by the receipt of benefits. These materials shall be posted in all community service offices and distributed to families. Materials must be available in multiple languages. When a family leaves the temporary assistance for needy families program, receives cash diversion assistance, or withdraws a temporary assistance for needy families application, the department of social and health services shall educate them about the difference between cash assistance and work support benefits and offering them the opportunity to begin or to continue receiving work support benefits, so long as they are eligible. The department shall provide this information through in-person interviews, over the telephone, and/or through the mail. Work support benefits include food stamps, medicaid for all family members, medicaid or state children's health insurance program for children, and child care assistance. The department shall report annually to the legislature the number of families who have had exit interviews, been reached successfully by phone, and sent mail. The report shall also include the percentage of families who elect to continue each of the benefits and the percentage found ineligible by each substantive reason code. A substantive reason code shall not be "other." The report shall identify barriers to informing families about work support benefits and describe existing and future actions to overcome such barriers.

(c) Provide \$500,000 from the general fund—state appropriation for fiscal year 2000 and \$500,000 from the general fund—state appropriation for fiscal year 2001 for continuation of the WorkFirst evaluation conducted by the joint legislative audit and review committee.

(d) Report to the appropriate committees of the legislature, by December 1, 2000, how the new federal child support incentive system can be used to maximize federal incentive payments and to support the greatest achievement of WorkFirst program goals. In the event that the department earns federal child support incentive payments in excess of amounts budgeted, the department shall use one-half of those additional funds to offset general fund—state allotments and one-half of those additional funds to improve child support services. The department shall also work with the Washington state association of county clerks to identify ways to protect the confidentiality of social security numbers on court documents needed by the child support enforcement system while ensuring the reliability of this information without significantly increasing the cost to administer the child support system. The department shall report its recommendations for protecting the confidentiality of social security numbers to appropriate committees of the legislature by December 1, 2000.

(e) Provide up to \$500,000 of the general fund—federal appropriation to the office of financial management for a study of rate setting methods and policy for subsidized child care, the best method for coordinating and consolidating child care and early education programs currently funded by state government, and for a review of the various state programs for low-income families with children. The

child care rate study shall analyze the effects of rate setting policy on the affordability and quality of the overall child care market. The child care and early education program study shall evaluate how current programs may be coordinated and consolidated to provide the most efficient level of administration, grant funding, and increased accessibility by families who are served by these programs. The study of state programs for low-income families shall compare and contrast eligibility and access to these programs and identify ways to coordinate or consolidate these programs to reduce administrative costs and improve access. The office shall submit a report to the department of social and health services and the appropriate committees of the legislature by December 1, 2000.

(f) Convene a working group that includes stakeholders and recipients of public assistance to establish basic customer service performance measures and goals. The customer service measures and goals will seek to make support for working families a priority. Customer service measures and goals may include, but are not limited to: Hours of operation that allow working families to get services without missing work, reduced wait times, systems for answering and returning phone calls in a timely manner, access to benefits that support work, access to job training and education, and, access to services for families with limited literacy or English skills, and families with special needs. The department shall report to the legislature by January 2001 the establishment of customer service measures and goals, and the departmental actions to assure the goals are being met.

(g) Use existing flexibility in federal and state welfare laws and regulations to support, on a limited basis, longer education and training plans that have a strong likelihood to lead to long-term economic independence for recipient.

(h) Provide up to \$1,400,000 of the general fund—federal appropriation for after-school care for middle school youth through programs such as those described in House Bill No. 2530 (after-school care).

(i) Provide up to \$2,710,000 of the general fund—federal appropriation for training and technical assistance for child care providers seeking training to enable them to competently serve children with special needs as described in House Bill No. 2869 (child care provider training).

(j) Provide \$230,000, or as much thereof as may be necessary, to the department of health to expand the vasectomy project to temporary assistance for needy families clients and their partners until such time as a federal family planning waiver is granted that will cover these services.

(k) Ensure that funds provided in this subsection to implement policies that disregard or exempt a portion of recipients' income are designed to achieve stated WorkFirst program goals and outcomes. Income disregards are effective incentives to help WorkFirst families move towards economic independence. Income disregard policy shall not discriminate based on who the specific employer is.

(2) \$43,408,000 of the general fund—state appropriation for fiscal year 2000 and (~~(\$43,386,000)~~) \$46,420,000 of the general fund—state appropriation for fiscal

year 2001 are provided solely for cash assistance and other services to recipients in the general assistance—unemployable program. Within these amounts, the department may expend funds for services that assist recipients to reduce their dependence on public assistance, provided that expenditures for these services and cash assistance do not exceed funds provided. The department shall, by July 1, 2000, begin using federal funds provided in subsection (1) of this section, as allowed by federal rules, for the costs of providing income assistance to children with court-appointed guardians or court-appointed custodians.

(3) \$5,444,000 of the general fund—state appropriation for fiscal year 2000 and \$5,632,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the food assistance program for legal immigrants. The level of benefits shall be equivalent to the benefits provided by the federal food stamp program.

(4) RCW 74.08A.280 permits the department to develop contracts for state-wide welfare-to-work services. Within amounts available in this section, the department shall provide progress reports on the use of such contracting to the fiscal committees of the legislature by January 1, 2001. Each of these reports shall describe the number of current contracts for temporary assistance for needy families (TANF) or WorkFirst services that the department has with community social service providers and a description of the services being provided through each of those contracts.

(5) The legislature finds that, since the passage of the federal personal responsibility and work opportunity act in 1997, Washington's public assistance population has declined dramatically, and that the currently appropriated level for the temporary assistance for needy families program is sufficient for the 1999-01 biennium. The legislature further finds that federal funding for the temporary assistance for needy families program may decrease after the current five-year block grant has expired. The legislature declares that at least \$60,000,000 of the year-end balance in the federal TANF grant shall be held in reserve by the office of financial management at the close of the 1999-01 biennium.

Sec. 208. 2000 2nd sp.s. c 1 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ALCOHOL AND SUBSTANCE ABUSE PROGRAM**

General Fund—State Appropriation (FY 2000)	\$	21,338,000
General Fund—State Appropriation (FY 2001)	\$	((22,101,000))
		<u>22,066,000</u>
General Fund—Federal Appropriation	\$	((90,373,000))
		<u>90,364,000</u>
General Fund—Private/Local Appropriation	\$	1,204,000
Public Safety and Education Account—State Appropriation	\$	7,102,000
Violence Reduction and Drug Enforcement Account— State Appropriation	\$	77,150,000

TOTAL APPROPRIATION \$ ((219,268,000))
219,224,000

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

(1) \$1,960,000 of the general fund—state appropriation for fiscal year 2000 and \$1,960,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for expansion of 50 drug and alcohol treatment beds for persons committed under RCW 70.96A.140. Patients meeting the commitment criteria of RCW 70.96A.140 but who voluntarily agree to treatment in lieu of commitment shall also be eligible for treatment in these additional treatment beds. The department shall develop specific placement criteria for these expanded treatment beds to ensure that this new treatment capacity is prioritized for persons incapacitated as a result of chemical dependency and who are also high utilizers of hospital services.

(2) \$18,000 of the general fund—state appropriation for fiscal year 2000, \$88,000 of the general fund—state appropriation for fiscal year 2001, and \$116,000 of the general fund—federal appropriation are provided solely for activities related to chemical dependency services under subsection 202(1) of this act. If that subsection is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(3) \$1,444,000 of the general fund—state appropriation for fiscal year 2000, \$1,484,000 of the general fund—state appropriation for fiscal year 2001, and \$330,000 of the general fund—federal appropriation are provided for implementation of Engrossed Substitute Senate Bill No. 5480 (drug-affected infants) or sections 1 through 17 of Second Substitute House Bill No. 1574. If legislation expanding services to prevent drug-affected infants is not enacted by June 30, 1999, the amounts provided in this subsection shall be provided solely for the development and implementation of comprehensive programs for alcohol and drug abusing mothers and their young children. The pilot programs shall be implemented in several locations, including at least one rural location. The pilot programs shall also be supported with TANF funds provided in section 208 of this act as a way to reduce prolonged dependency on public assistance for program participants.

(4) \$442,000 of the public safety and education account—state appropriation is provided solely for drug courts that have a net loss of federal grant funding from fiscal year 2000 to fiscal year 2001. The legislature finds that drug courts reduce criminal justice costs for both state and local governments. This appropriation is intended to cover approximately one-half of the lost federal funding. It is the intent of the legislature to provide state assistance to counties to cover a part of lost federal funding for drug courts for a maximum of three years.

Sec. 209. 2000 2nd sp.s. c 1 s 210 (uncodified) is amended to read as follows:
**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
 MEDICAL ASSISTANCE PROGRAM**

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General Fund—State Appropriation (FY 2000)	\$	744,327,000
General Fund—State Appropriation (FY 2001)	\$	((834,864,000))
		<u>976,059,000</u>
General Fund—Federal Appropriation	\$	((2,542,652,000))
		<u>2,701,092,000</u>
General Fund—Private/Local Appropriation	\$	((258,616,000))
		<u>256,704,000</u>
Emergency Medical Services and Trauma Care Systems		
Trust Account—State Appropriation	\$	9,200,000
Health Services Account—State Appropriation	\$	((487,040,000))
		<u>527,852,000</u>
TOTAL APPROPRIATION	\$	((4,876,699,000))
		<u>5,215,234,000</u>

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

(1) The department shall continue to make use of the special eligibility category created for children through age 18 and in households with incomes below 200 percent of the federal poverty level made eligible for medicaid as of July 1, 1994.

(2) It is the intent of the legislature that Harborview medical center continue to be an economically viable component of the health care system and that the state's financial interest in Harborview medical center be recognized.

(3) Funding is provided in this section for the adult dental program for Title XIX categorically eligible and medically needy persons and to provide foot care services by podiatric physicians and surgeons.

(4) \$1,647,000 of the general fund—state appropriation for fiscal year 2000 and \$1,672,000 of the general fund—state appropriation for fiscal year 2001 are provided for treatment of low-income kidney dialysis patients.

(5) \$80,000 of the general fund—state appropriation for fiscal year 2000, \$80,000 of the general fund—state appropriation for fiscal year 2001, and \$160,000 of the general fund—federal appropriation are provided solely for the prenatal triage clearinghouse to provide access and outreach to reduce infant mortality.

(6) The department shall report to the fiscal committees of the legislature by September 15, 1999, and again by December 15, 1999, on (a) actions it has taken and proposes to take to increase the share of medicare part B premium payments upon which it is collecting medicaid matching funds; (b) the percentage of such premium payments for each month of service subsequent to June 1998 which have been paid with unmatched, state-only funds; and (c) why matching funds could not be collected on those payments.

(7) The department shall report to the fiscal committees of the legislature by December 1, 1999, and again by October 1, 2000, on the amount which has been recovered from third-party payers as a result of its efforts to improve coordination of benefits on behalf of "basic health plan-plus" enrollees.

(8) The department shall report to the health care and fiscal committees of the legislature by December 1, 1999, on options for controlling the growth in medicaid prescription drug expenditures through strategies such as but not limited to volume purchasing, selective contracting, supplemental drug discounts, and improved care coordination for high utilizers.

(9) \$3,992,000 of the health services account appropriation and \$7,651,000 of the general fund—federal appropriation are provided solely for health insurance coverage for children with family incomes between 200 percent and 250 percent of the federal poverty level, as provided in Substitute Senate Bill No. 5416 (children's health insurance program). If the bill is not enacted by June 30, 1999, these amounts shall lapse.

(10) Upon approval from the federal health care financing administration, the department shall implement the section 1115 family planning waiver to provide family planning services to persons with family incomes at or below two hundred percent of the federal poverty level.

(11) In accordance with Substitute Senate Bill No. 5968, \$70,821,000 of the health services account appropriation for fiscal year 2000, (~~(\$42,041,000)~~) \$67,331,000 of the health services account appropriation for fiscal year 2001, and (~~(\$120,278,000)~~) \$146,579,000 of the general fund—federal appropriation, or so much thereof as may be expended without exceeding the medicare upper payment limit, are provided solely for supplemental payments to nursing homes operated by rural public hospital districts. Such payments shall be distributed among the participating rural public hospital districts proportional to the number of days of medicaid-funded nursing home care provided by each district during the preceding calendar year, relative to the total number of such days of care provided by all participating rural public hospital districts. Prior to making any supplemental payments, the department shall first obtain federal approval for such payments under the medicaid state plan. The payments shall further be conditioned upon (a) a contractual commitment by the association of public hospital districts and participating rural public hospital districts to make an intergovernmental transfer to the state treasurer, for deposit into the health services account, equal to at least ~~(87)~~ 89 percent of the total supplemental payment amounts received during the 1999-01 fiscal biennium; and (b) a contractual commitment by the participating districts to not allow expenditures covered by the supplemental payments to be used for medicaid nursing home rate-setting. The participating districts shall retain no more than a total of \$30,000,000 for the 1999-01 biennium.

(12) In determining financial eligibility for medicaid-funded services, the department is authorized to disregard recoveries by Holocaust survivors of insurance proceeds or other assets, as defined in RCW 48.104.030.

(13) \$1,529,000 of the general fund—state appropriation for fiscal year 2000, \$4,077,000 of the general fund—state appropriation for fiscal year 2001, and \$5,394,000 of the general fund—federal appropriation are provided solely for

implementation of the settlement negotiated by the department and the attorney general in the case of *Allenmore et al. vs. DSHS*.

(14) From funds provided in this section, the department shall develop disease state management and therapeutic substitution programs which will substantially maintain or enhance the quality of the drug benefit for medical assistance recipients, while controlling overall health care costs. In designing the disease state management programs, the department shall research programs which have proven effective with similar populations in other states, and shall then work with concerned provider and consumer groups to adapt those strategies to Washington's service delivery system. The department shall work with its drug utilization and education council to develop a therapeutic substitution program for at least two classes of drugs. Under the therapeutic substitution program, the council shall analyze pharmacoeconomic research on the costs and benefits of all drugs within the class, and identify the most cost-effective drug or drugs within the class for placement on the formulary. Other drugs within the class shall be preauthorized when clinically indicated under criteria established by the council. The department shall report to appropriate committees of the legislature by December 1, 2000, prior to implementing its proposed strategies.

(15) (~~(\$14,848,000)~~) \$27,100,000 of the health services account appropriation for fiscal year 2001 and (~~(\$15,269,000)~~) \$27,800,000 of the general fund—federal appropriation are provided solely for additional disproportionate share hospital payments to public hospital districts. Such additional payments shall not be made prior to federal approval of a revision in the medicaid payment methodology for state teaching hospitals, and shall not exceed the increase in medicaid payments which results from that change. The payments shall further be conditioned upon a contractual commitment by the participating public hospital districts to make an intergovernmental transfer to the health services account equal to at least (~~(77)~~) 85 percent of the additional disproportionate share payment. The participating districts shall retain no more than (~~(\$7,000,000)~~) \$7,800,000 of the additional disproportionate share payment. At least 28 percent of the amounts retained by the participating hospital districts shall be allocated to the state teaching hospitals.

(16)(a) \$49,000 of the general fund—state appropriation for fiscal year 2001 and \$49,000 of the general fund—federal appropriation for fiscal year 2001 are provided solely for the medical assistance administration and the health care authority to jointly conduct a state-wide study to:

(i) Determine payment sources and rates paid for primary health care providers performing outpatient primary care services and primary care in hospital emergency rooms for the state's medical assistance programs, including healthy options, and the basic health plan. To determine payment sources and rates paid, the agencies may seek information in relation to such factors as:

(A) The rates paid to primary care providers for their medical assistance programs, including healthy options, and basic health plan contracts; and

(B) How these rates compare with nonpublic pay clients for the same services.

The agencies are authorized to attain this information from health plans or providers. The agencies shall maintain the confidentiality of data collected for the purpose of the study;

(ii) Determine which primary care providers serve a relatively high number of low-income clients, and how that affects their medical practice. For purposes of the study, "primary care providers" includes pediatricians, family practitioners, general practitioners, internists, physician assistants, and advanced registered nurse practitioners; and

(iii) Develop proposals to support these providers' medical practices. The agencies must determine what constitutes a relatively high percentage of low-income clients for individual primary care providers who contract for medical assistance administration programs, including healthy options, and the basic health plan, and recommend whether and at what point this disproportionately high percentage should result in additional compensation to the primary care provider. The agencies shall recommend a method to calculate a payment adjustment designed to help support medical practices, according to the study's findings.

(b) In conducting the study, the agencies shall determine which regions of the state to include in the study, based on factors the agencies determine will provide the most representative data state-wide. The agencies shall also consult with interested parties, including any organization or agency affected by this subsection, throughout the course of the study.

(c) The agencies shall report to the legislature by December 1, 2000, with the results of the primary health care provider study. The report shall include recommendations on: (i) What constitutes a disproportionately high percentage of low-income clients; (ii) possible payment adjustments for these providers; (iii) methods to implement such a rate adjustment; and (iv) what such a payment adjusted program will cost.

(17) From funds appropriated in this section, the medical assistance program shall assist the Washington state institute for public policy with the assessment of options for expanding medicaid eligibility required in section 607 of this 2000 act. Such assistance shall include analysis of medicaid enrollment and expenditure data needed for enrollment and cost projections; information and advice on state and federal medicaid requirements; and liaison with state and federal officials in other states undertaking similar expansions.

(18) \$290,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for implementation of the asset exemption provisions of House Bill No. 2686. If these provisions are not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

**Sec. 210. 2000 2nd sp.s. c 1 s 211 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
VOCATIONAL REHABILITATION PROGRAM**

General Fund—State Appropriation (FY 2000)	\$	8,770,000
General Fund—State Appropriation (FY 2001)	\$	((8,635,000))

	<u>8,600,000</u>
General Fund—Federal Appropriation	\$ ((81,906,000))
	<u>81,797,000</u>
General Fund—Private/Local Appropriation	\$ 1,865,000
TOTAL APPROPRIATION	\$ ((101,176,000))
	<u>101,032,000</u>

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

(1) The division of vocational rehabilitation shall negotiate cooperative interagency agreements with state and local organizations to improve and expand employment opportunities for people with severe disabilities served by those organizations.

(2) \$190,000 of the general fund—state appropriation for fiscal year 2000, \$240,000 of the general fund—state appropriation for fiscal year 2001, and \$1,590,000 of the general fund—federal appropriation are provided solely for vocational rehabilitation services for individuals enrolled for services with the developmental disabilities program who complete their high school curriculum in 1999 or 2000.

Sec. 211. 2000 2nd sp.s. c 1 s 212 (uncodified) is amended to read as follows:
**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
 ADMINISTRATION AND SUPPORTING SERVICES PROGRAM**

General Fund—State Appropriation (FY 2000)	\$ 26,004,000
General Fund—State Appropriation (FY 2001)	\$ ((20,119,000))
	<u>26,135,000</u>
General Fund—Federal Appropriation	\$ ((43,227,000))
	<u>47,157,000</u>
General Fund—Private/Local Appropriation	\$ 720,000
TOTAL APPROPRIATION	\$ ((90,070,000))
	<u>100,016,000</u>

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

(1) Funding is provided for the incremental cost of lease renewals and for the temporary increased costs for relocating staff out of state office building no. 2 (OB2) during the renovation of that building. Of this increase, \$2,400,000 is provided for relocating staff. This amount is recognized as one-time-only funding for the 1999-01 biennium. As part of the 2001-2003 budget request, the department shall update the estimate of increased cost for relocating staff, including specifying what portion of that increase is due to providing more square footage per FTE in the new leased space compared to the space occupied previously.

(2) The department may transfer up to \$528,000 of the general fund—state appropriation for fiscal year 2000, \$1,057,000 of the general fund—state

appropriation for fiscal year 2001, and \$812,000 of the general fund—federal appropriation to the administration and supporting services program from various other programs to implement administrative reductions.

(3) The department may transfer and allot up to \$5,560,000 of the general fund—state appropriation for fiscal year 2001 and \$3,518,000 of the general fund—federal appropriation to the administration and supporting services program from various other programs in the department to achieve fiscal reductions assumed in this section. In selecting reductions in the various other programs, the department shall place a higher priority on reductions in administrative support functions as opposed to direct client services. Reductions in positions providing direct client services shall be implemented only if those reductions can be justified by reduced workload or through reorganization or other efficiencies that do not result in a risk of failing to meet federal or state certification or licensing standards. In achieving the level of savings assumed in this subsection, the department shall not eliminate or reduce funding and/or staff that would shift or transfer filing or appeal workload to superior courts. By September 1, 2000, the department shall report its plan to implement the savings in this section to the fiscal committees of the legislature.

(4) \$187,000 of the general fund—state appropriation for fiscal year 2000, \$746,000 of the general fund—state appropriation for fiscal year 2001, and (~~(\$2,251,000)~~) \$2,500,000 of the general fund—federal appropriation are provided to implement a new fraud and abuse detection system. By December 1, 2000, the department shall provide a report to the fiscal committees of the legislature that will include: The actual cost recovery in fiscal year 1999 and fiscal year 2000, prior to implementation of the new fraud and abuse detection system; actual cost avoidance in fiscal year 1999 and fiscal year 2000, prior to implementation of the new fraud and abuse detection system; actual cost recovery and actual cost avoidance achieved to date after implementation in fiscal year 2000 and 2001, compared to the savings included in sections 202, 205, 206, and 209 of this 2000 act; and the criteria and methodology used for determining cost recovery and cost avoidance.

Sec. 212. 2000 2nd sp.s. c 1 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
PAYMENTS TO OTHER AGENCIES PROGRAM**

General Fund—State Appropriation (FY 2000)	\$	31,190,000
General Fund—State Appropriation (FY 2001)	\$	31,225,000
General Fund—Federal Appropriation	\$	((21,932,000))
		<u>21,984,000</u>
TOTAL APPROPRIATION	\$	((84,347,000))
		<u>84,399,000</u>

Sec. 213. 2000 2nd sp.s. c 1 s 216 (uncodified) is amended to read as follows:

FOR THE CRIMINAL JUSTICE TRAINING COMMISSION

General Fund—Federal Appropriation	\$	100,000
Death Investigations Account—State		

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Appropriation	\$	148,000
Public Safety and Education Account—State		
Appropriation	\$	((17,632,000))
		<u>16,492,000</u>
<u>Municipal Criminal Justice Assistance Account—</u>		
Local Appropriation	\$	412,000
TOTAL APPROPRIATION	\$	((17,880,000))
		<u>17,152,000</u>

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

(1) \$125,000 of the public safety and education account appropriation is provided solely for information technology upgrades and improvements for the criminal justice training commission.

(2) \$481,000 of the public safety and education account appropriation is provided solely for the implementation of provisions of chapter 351, Laws of 1997 (criminal justice training) dealing with supervisory and management training of law enforcement personnel. Within the funds provided in this subsection, the criminal justice training commission shall provide the required training in the least disruptive manner to local law enforcement agencies and may include, but is not limited to, regional on-site training, interactive training, and credit for training given by the home department.

(3) \$1,990,000 of the public safety and education account appropriation is provided solely for expanding the basic law enforcement academy (BLEA) from 469 hours to 720 hours. The funds provided in this subsection are assumed sufficient for the criminal justice training commission to provide expanded BLEA training to 330 attendees in fiscal year 2000 and 660 attendees in fiscal year 2001.

(4) \$180,000 of the public safety and education account appropriation is provided solely for the implementation of Second Substitute House Bill No. 1176 (sexually violent offender records). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(5) \$276,000 of the public safety and education account appropriation is provided solely for the implementation of Second Substitute House Bill No. 1692 or sections 1 through 7 of Senate Bill No. 5127 (child abuse investigations). If neither of these bills is enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(6) \$50,000 of the public safety and education account appropriation is provided solely for additional domestic violence training courses for 911 operators.

(7) \$215,000 of the public safety and education account appropriation is provided solely for the Washington association of sheriffs and police chiefs to conduct a study of law enforcement services and expenditures for both counties and cities within the county for counties with populations over one hundred fifty thousand. The study shall begin no later than July 1, 2000, and shall be completed by ~~((June 30))~~ October 31, 2001. The final report shall be distributed by the

Washington association of sheriffs and police chiefs to the appropriate standing committees of the legislature. The study shall:

(a) Make recommendations to improve the efficiency of delivering law enforcement services. The recommendations may be made to law enforcement jurisdictions, Washington association of sheriffs and police chiefs, units of local government, and the legislature;

(b) Research, compile, and analyze data sufficient to provide a comprehensive analysis of the costs and total expenditures for law enforcement. These costs include but are not limited to special services, defined as but not limited to: SWAT teams, bomb disposal units, air support, marine units, hostage negotiation teams, homicide investigation units, drug units, canine units, arson investigation teams, computer fraud and forensics units, domestic violence and special assault units, and gang and youth violence units. The study shall identify duplications and inefficiencies in current service delivery;

(c) Obtain data from all local governments on the types of costs identified in (b) of this subsection. This data will be compiled and analyzed by the agency or organization that conducts the study for each county; and

(d) Obtain data from those counties and law enforcement agencies where master interlocal agreements, joint specialty service units, and other cooperative arrangements have been developed between law enforcement agencies to improve the effectiveness, efficiency, and ensured quality of specialty law enforcement services.

Sec. 214. 2000 2nd sp.s. c 1 s 217 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LABOR AND INDUSTRIES

General Fund—State Appropriation (FY 2000)	\$	7,268,000
General Fund—State Appropriation (FY 2001)	\$	7,240,000
Public Safety and Education Account—State		
Appropriation	\$	((18,756,000))
		<u>20,156,000</u>
Public Safety and Education Account—Federal		
Appropriation	\$	5,950,000
Public Safety and Education Account—Private/Local		
Appropriation	\$	3,057,000
Electrical License Account—State		
Appropriation	\$	24,402,000
Farm Labor Revolving Account—Private/Local		
Appropriation	\$	28,000
Worker and Community Right-to-Know Account—State		
Appropriation	\$	2,211,000
Public Works Administration Account—State		
Appropriation	\$	2,996,000
Accident Account—State Appropriation	\$	167,092,000
Accident Account—Federal Appropriation	\$	9,112,000

Medical Aid Account—State Appropriation	\$	169,172,000
Medical Aid Account—Federal Appropriation	\$	1,592,000
Plumbing Certificate Account—State		
Appropriation	\$	971,000
Pressure Systems Safety Account—State		
Appropriation	\$	2,167,000
TOTAL APPROPRIATION	\$	((422,014,000)) 423,414,000

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

(1) Pursuant to RCW 7.68.015, the department shall operate the crime victims compensation program within the public safety and education account funds appropriated in this section. In the event that cost containment measures are necessary, the department may (a) institute copayments for services; (b) develop preferred provider and managed care contracts; (c) coordinate with the department of social and health services to use the public safety and education account as matching funds for federal Title XIX reimbursement, to the extent this maximizes total funds available for services to crime victims. Cost containment measures shall not include holding invoices received in one fiscal period for payment from appropriations in subsequent fiscal periods.

(2) \$2,665,000 of the public safety and education account—state appropriation is provided solely for additional costs for client benefits in the crime victims compensation program, provided that no more than \$5,095,000 of the appropriations provided in subsection (1) of this section is expended for department administration of the crime victims compensation program.

(3) From within funds provided, the department shall improve customer service and satisfaction for injured workers by speeding up the process for reporting injuries, and shall enhance vocational rehabilitation services for injured workers.

**Sec. 215. 2000 2nd sp.s. c 1 s 218 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF VETERANS AFFAIRS**

(1) HEADQUARTERS

General Fund—State Appropriation (FY 2000)	\$	1,640,000
General Fund—State Appropriation (FY 2001)	\$	1,628,000
General Fund—Federal Appropriation	\$	134,000
General Fund—Private/Local Appropriation	\$	78,000
Industrial Insurance Premium Refund Account—State		
Appropriation	\$	78,000
Charitable, Educational, Penal, and Reformatory		
Institutions Account—State		
Appropriation	\$	2,000
TOTAL APPROPRIATION	\$	3,560,000

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

(a) \$39,000 of the general fund—state appropriation is provided solely as an additional state contribution toward the cost of constructing a memorial on the state capitol grounds to the men and women who served in the nation’s armed forces during the second world war.

(b) \$231,000 of the general fund—state appropriation for fiscal year 2000 is provided solely for disbursement to the national World War II memorial fund for construction and maintenance of the national monument honoring the men and women from Washington and the other states who served in the nation’s armed forces during the second world war.

(c) \$200,000 of the general fund—state appropriation for fiscal year 2001 is provided solely to conduct a predesign study for replacement of aging skilled nursing facilities. The predesign study shall comply with the requirements of sections 902 and 903, chapter 379, Laws of 1999.

(2) FIELD SERVICES

General Fund—State Appropriation (FY 2000)	\$	2,466,000
General Fund—State Appropriation (FY 2001)	\$	2,494,000
General Fund—Federal Appropriation	\$	((26,000))
		<u>78,000</u>
General Fund—Private/Local Appropriation	\$	1,495,000
TOTAL APPROPRIATION	\$	((6,481,000))
		<u>6,533,000</u>

(3) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2000)	\$	5,346,000
General Fund—State Appropriation (FY 2001)	\$	4,790,000
General Fund—Federal Appropriation	\$	23,002,000
General Fund—Private/Local Appropriation	\$	16,527,000
TOTAL APPROPRIATION	\$	49,665,000

Sec. 216. 2000 2nd sp.s. c 1 s 219 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF HEALTH

General Fund—State Appropriation (FY 2000)	\$	62,840,000
General Fund—State Appropriation (FY 2001)	\$	64,284,000
General Fund—Federal Appropriation	\$	((268,032,000))
		<u>268,081,000</u>
General Fund—Private/Local Appropriation	\$	((68,648,000))
		<u>74,989,000</u>
Hospital Commission Account—State Appropriation	\$	2,378,000
Health Professions Account—State Appropriation	\$	37,529,000
Emergency Medical Services and Trauma Care Systems		

Trust Account—State Appropriation	\$	14,856,000
State Drinking Water Account—State		
Appropriation	\$	2,531,000
Drinking Water Assistance Account—Federal		
Appropriation	\$	5,456,000
Waterworks Operator Certification—State		
Appropriation	\$	593,000
Water Quality Account—State Appropriation	\$	3,124,000
Accident Account—State Appropriation	\$	258,000
Medical Aid Account—State Appropriation	\$	45,000
State Toxics Control Account—State		
Appropriation	\$	2,614,000
Health Services Account Appropriation	\$	12,992,000
Medical Test Site Licensure Account—State		
Appropriation	\$	1,651,000
Youth Tobacco Prevention Account—State		
Appropriation	\$	1,804,000
Tobacco Prevention and Control Account—State		
Appropriation	\$	15,620,000
TOTAL APPROPRIATION	\$	((565,255,000))
		<u>571,645,000</u>

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

(1) \$2,434,000 of the health professions account appropriation is provided solely for the development and implementation of a licensing and disciplinary management system. Expenditures are conditioned upon compliance with section 902 of this act. These funds shall not be expended without appropriate project approval by the department of information systems.

(2) The department or any successor agency is authorized to raise existing fees charged to the nursing assistants, podiatrists, and osteopaths; for certificate of need; for temporary worker housing; for state institution inspection; for residential care facilities and for transient accommodations, in excess of the fiscal growth factor established by Initiative Measure No. 601, if necessary, to meet the actual costs of conducting business and the appropriation levels in this section.

(3) \$339,000 of the general fund—state appropriation for fiscal year 2000, \$339,000 of the general fund—state appropriation for fiscal year 2001, and \$678,000 of the general fund—federal appropriation are provided solely for technical assistance to local governments and special districts on water conservation and reuse. \$339,000 of the general fund—federal amount may be expended in each fiscal year of the biennium, only if the state receives greater than \$25,000,000 from the federal government for salmon recovery activities in that fiscal year. Funds authorized for expenditure in fiscal year 2000 may be expended in fiscal year 2001.

(4) \$1,685,000 of the general fund—state fiscal year 2000 appropriation and \$1,686,000 of the general fund—state fiscal year 2001 appropriation are provided solely for the implementation of the Puget Sound water work plan and agency action items, DOH-01, DOH-02, DOH-03, and DOH-04.

(5) The department of health shall not initiate any services that will require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for services authorized in this act or in any other legislation that provides appropriation authority, and an equal amount of appropriated state moneys shall lapse. Upon the lapsing of any moneys under this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.

(6) \$620,000 of the tobacco prevention and control account appropriation and \$209,000 of the general fund—federal appropriation are provided solely for implementation of Engrossed Substitute Senate Bill No. 5516 or, if the bill is not enacted, for the development of a sustainable, long-term, comprehensive tobacco control program. The plan shall identify a specific set of outcome measures that shall be used to track long range progress in reducing the use of tobacco. Nationally accepted measures that can be used to compare progress with other states shall be included. The plan shall emphasize programs that have demonstrated effectiveness in achieving progress towards the specified outcome measures. Components of the plan that do not have a record of success may be included, provided that the plan also includes the means of evaluating those components. The plan shall also include an inventory of existing publically funded programs that seek to prevent the use of tobacco, alcohol, or other drugs by children and youth and recommendations to coordinate and consolidate these programs in order to achieve greatest positive outcomes within total available resources. A preliminary plan shall be submitted to the appropriate committees of the legislature by December 1, 1999.

(7) \$2,075,000 of fiscal year 2000 general fund—state appropriation and \$2,075,000 of fiscal year 2001 general fund—state appropriation are provided for the Washington poison center. The department shall require the center to develop a long range financing plan that identifies options for diversifying funding for center operations, including, but not limited to, federal grants, private sector grants and sponsorships, and multistate or regional operating agreements. The plan shall be submitted to the appropriate committees of the legislature by December 1, 2000.

(8) \$50,000 of fiscal year 2000 general fund—state appropriation and \$50,000 of fiscal year 2001 general fund—state appropriation are provided solely for fund raising and other activities for the development of early hearing loss clinics. The development plan for these clinics shall not assume ongoing general fund—state appropriations.

(9) \$15,000,000 of the tobacco prevention and control account appropriation is provided solely for the implementation of a sustainable, long-term tobacco control program. The integrated components of the program may include: Community-based programs, cessation, public awareness and education, youth access, and assessment and evaluation. A final plan will define the sustainable implementation of the long-term program given the remaining available balance in the tobacco prevention and control account. This plan shall be submitted to the appropriate committees of the legislature by September 1, 2000.

(10) \$24,000 of the fiscal year 2000 general fund—state appropriation and \$117,000 of the fiscal year 2001 general fund—state appropriation are provided solely to implement Second Substitute Senate Bill No. 6199 (patient bill of rights). If the bill is not enacted by June 30, 2000, the amounts provided in this subsection shall lapse.

**Sec. 217. 2000 2nd sp.s. c l s 220 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF CORRECTIONS**

The appropriations to the department of corrections in chapter 309, Laws of 1999, as amended, shall be expended for the programs and in the amounts specified therein. However, after April 1, ~~((2000))~~ 2001, unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year ~~((2000))~~ 2001 between the correctional operations and community supervision programs after approval by the director of financial management. The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing prior to approving any deviations from appropriation levels.

(1) ADMINISTRATION AND SUPPORT SERVICES

General Fund—State Appropriation (FY 2000)	\$	26,064,000
General Fund—State Appropriation (FY 2001)	\$	28,022,000
Public Safety and Education Account—State Appropriation	\$	2,962,000
Violence Reduction and Drug Enforcement Account Appropriation	\$	2,000,000
Cost of Supervision Fund Appropriation	\$	2,254,000
TOTAL APPROPRIATION	\$	61,302,000

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

(a) \$72,000 of the general fund—state appropriation for fiscal year 2000, \$212,000 of the general fund—state appropriation for fiscal year 2001, \$2,962,000

of the public safety and education account appropriation, \$2,000,000 of the violence reduction drug enforcement account appropriation, and \$2,254,000 of the cost of supervision fund appropriation are provided solely for replacement of the department's offender-based tracking system. These amounts are subject to section 902 of this act.

(b) \$462,000 of the general fund—state appropriation for fiscal year 2000 and \$538,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5421 (offender accountability). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(2) CORRECTIONAL OPERATIONS

General Fund—State Appropriation (FY 2000)	\$	360,685,000
General Fund—State Appropriation (FY 2001)	\$	((364,386,000))
		<u>371,428,000</u>
General Fund—Federal Appropriation	\$	((35,577,000))
		<u>25,830,000</u>
Violence Reduction and Drug Enforcement Account—		
State Appropriation	\$	((1,614,000))
		<u>2,684,000</u>
Public Health Services Account Appropriation	\$	((1,884,000))
		<u>1,117,000</u>
Institutional Welfare Betterment Account		
Appropriation	\$	2,570,000
TOTAL APPROPRIATION	\$	((766,716,000))
		<u>764,314,000</u>

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

(a) Not more than \$3,000,000 may be expended to provide financial assistance to counties for monitoring and treatment services provided to felony offenders involved in drug court programs pursuant to sections 7 through 12 of Engrossed Second Substitute House Bill No. 1006 (drug offender sentencing). The secretary may negotiate terms, conditions, and amounts of assistance with counties or groups of counties operating drug courts, and may review charging and other documents to verify eligibility for payment. The secretary may contract with the division of alcohol and substance abuse, department of social and health services, for monitoring and treatment services provided pursuant to this subsection.

(b) The department may expend funds generated by contractual agreements entered into for mitigation of severe overcrowding in local jails. If any funds are generated in excess of actual costs, they shall be deposited in the state general fund. Expenditures shall not exceed revenue generated by such agreements and shall be treated as recovery of costs.

(c) The department shall provide funding for the pet partnership program at the Washington corrections center for women at a level at least equal to that provided in the 1995-97 biennium.

(d) The department of corrections shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(e) \$583,000 of the general fund—state appropriation for fiscal year 2000 and \$1,178,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to increase payment rates for contracted education providers and contracted work release facilities. It is the legislature's intent that these amounts be used primarily to increase compensation for persons employed in direct, front-line service delivery.

(f) \$151,000 of the general fund—state appropriation for fiscal year 2000 and \$57,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5421 (offender accountability). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(g) \$18,000 of the general fund—state appropriation for fiscal year 2000 and \$334,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Senate Bill No. 5538 (sentencing) or section 3 of House Bill No. 1544 (sentencing corrections). If neither bill is enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(h) \$171,000 of the general fund—state appropriation for fiscal year 2000 and \$1,094,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Engrossed Second Substitute House Bill No. 1006 (drug offender sentencing). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(i) The department of corrections shall submit to the appropriate policy and fiscal committees of the senate and house of representatives, by December 15, 1999, a report on how the department plans to manage hepatitis C in the inmate population. In developing the plan, the department shall work with recognized experts in the field and shall take notice of the current national institutes of health hepatitis C guidelines and hepatitis C protocols observed in other correctional settings. Included in the plan shall be offender education about the disease, how and when offenders would be tested, how the disease would be managed if an inmate is determined to have hepatitis C, and an estimate of the number of inmates in the Washington prison system with hepatitis C. The proposed plan must also include recommendations to the legislature on ways to improve hepatitis C disease management and what level of funding would be necessary to appropriately test for and treat the disease.

(j) For the acquisition of properties and facilities, the department of corrections is authorized to enter into financial contracts, paid for from operating

resources, for the purposes indicated and in not more than the principal amounts indicated, plus financing expenses and required reserves pursuant to chapter 39.94 RCW. This authority applies to the following:

(A) Enter into a long-term ground lease or a long-term lease with purchase option for development of a Tacoma prerelease facility for approximately \$360,000 per year. Prior to entering into any lease, the department of corrections shall obtain written confirmation from the city of Tacoma and Pierce county that the prerelease facility planned for the site meets all land use, environmental protection, and community notification requirements.

(B) Enter into a financing contract in the amount of \$21,350,000 to acquire, construct, or remodel a 400-bed, expandable to 600-bed, Tacoma prerelease facility.

(C) Lease-develop with the option to purchase or lease-purchase approximately 100 work release beds in facilities throughout the state for \$7,000,000.

(k) (~~(\$1,884,000)~~) \$1,117,000 of the public health services account appropriation is provided solely for costs associated with the testing, treatment, and other activities related to managing hepatitis C in the inmate population.

(l) \$117,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the implementation of Second Substitute Senate Bill No. 6255 (anhydrous ammonia). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(m) \$2,570,000 of the institutional welfare betterment account appropriation is provided solely for deposit in the public health services account.

(n) During the 1999-01 biennium, when contracts are established or renewed for offender pay phone and other telephone services provided to inmates, the department shall select the contractor or contractors primarily based on the following factors: (i) The lowest rate charged to both the inmate and the person paying for the telephone call; and (ii) the lowest commission rates paid to the department, while providing reasonable compensation to cover the costs of the department to provide the telephone services to inmates and provide sufficient revenues for the activities funded from the institutional welfare betterment account as of January 1, 2000.

(3) COMMUNITY SUPERVISION

General Fund—State Appropriation (FY 2000)	\$	48,451,000
General Fund—State Appropriation (FY 2001)	\$	((53,787,000))
		<u>53,311,000</u>
Public Safety and Education		
Account—State Appropriation	\$	9,861,000
TOTAL APPROPRIATION	\$	((12,099,000))
		<u>111,623,000</u>

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

(a) The department of corrections shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(b) Amounts provided in this subsection are sufficient for the implementation of Engrossed Second Substitute Senate Bill No. 5421 (offender accountability).

(c) \$109,000 of the general fund—state appropriation for fiscal year 2000 and \$126,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of Substitute Senate Bill No. 5011 (dangerous mentally ill offenders). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(d) \$219,000 of the general fund—state appropriation for fiscal year 2000 and \$75,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the department of corrections to contract with the institute for public policy for responsibilities assigned in Engrossed Second Substitute Senate Bill No. 5421 (offender accountability act) and sections 7 through 12 of Engrossed Second Substitute House Bill No. 1006 (drug offender sentencing).

(4) CORRECTIONAL INDUSTRIES

General Fund—State Appropriation (FY 2000)	\$	817,000
General Fund—State Appropriation (FY 2001)	\$	((3,523,000))
		<u>150,000</u>
Institutional Welfare Betterment Account		
Appropriation	\$	3,509,000
TOTAL APPROPRIATION	\$	((7,849,000))
		<u>4,476,000</u>

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

(a) \$100,000 of the general fund—state appropriation for fiscal year 2000 and \$100,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for transfer to the jail industries board. The board shall use the amounts provided only for administrative expenses, equipment purchases, and technical assistance associated with advising cities and counties in developing, promoting, and implementing consistent, safe, and efficient offender work programs.

(b) \$50,000 of the general fund—state appropriation for fiscal year 2000 and \$50,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the correctional industries board of directors to hire one staff person, responsible directly to the board, to assist the board in fulfilling its duties.

(5) INTERAGENCY PAYMENTS

General Fund—State Appropriation (FY 2000)	\$	12,898,000
General Fund—State Appropriation (FY 2001)	\$	((11,983,000))
		<u>12,255,000</u>

TOTAL APPROPRIATION \$ ((24,881,000))
25,153,000

Sec. 218. 1999 c 309 s 223 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SERVICES FOR THE BLIND

General Fund—State Appropriation (FY 2000) \$ 1,481,000
 General Fund—State Appropriation (FY 2001) \$ 1,513,000
 General Fund—Federal Appropriation \$ ((11,062,000))
11,612,000
 General Fund—Private/Local Appropriation \$ 80,000
 TOTAL APPROPRIATION \$ ((14,136,000))
14,686,000

Sec. 219. 2000 2nd sp.s. c 1 s 222 (uncodified) is amended to read as follows:

FOR THE EMPLOYMENT SECURITY DEPARTMENT

General Fund—State Appropriation (FY 2000) \$ 1,263,000
 General Fund—State Appropriation (FY 2001) \$ 1,259,000
 General Fund—Federal Appropriation \$ 209,498,000
 General Fund—Private/Local Appropriation \$ 29,135,000
 Unemployment Compensation Administration Account—
 Federal Appropriation \$ ((169,985,000))
177,799,000
 Administrative Contingency Account—State
 Appropriation \$ 9,443,000
 Employment Service Administrative Account—State
 Appropriation \$ 19,457,000
 TOTAL APPROPRIATION \$ ((440,040,000))
447,854,000

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

- (1) Expenditures of funds appropriated in this section for the information systems project to improve the agency’s labor exchange system are conditioned upon compliance with section 902 of this act.
- (2) \$327,000 of the unemployment compensation administration account—federal appropriation is provided consistent with section 903(c)(2) of the federal social security act to address deficiencies in the tax and wage information system (TAXIS) and to improve the quality and timeliness of employer tax information and employee wage records.
- (3) \$2,567,000 of the employment service administrative account—state appropriation is provided solely for implementation of Substitute House Bill No. 3077 (unemployment insurance). If the bill is not enacted by June 30, 2000, the amounts provided in this subsection shall lapse.

**PART III
NATURAL RESOURCES**

Sec. 301. 2000 2nd sp.s. c 1 s 301 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

General Fund—State Appropriation (FY 2000)	\$	36,462,000
General Fund—State Appropriation (FY 2001)	\$	42,225,000
General Fund—Federal Appropriation	\$	55,141,000
General Fund—Private/Local Appropriation	\$	4,234,000
Special Grass Seed Burning Research Account—		
State Appropriation	\$	14,000
Reclamation Revolving Account—State		
Appropriation	\$	1,735,000
Flood Control Assistance Account—		
State Appropriation	\$	((3,989,000))
		<u>3,957,000</u>
Public Safety and Education Account—		
State Appropriation	\$	749,000
State Emergency Water Projects Revolving Account—		
State Appropriation	\$	317,000
Waste Reduction/Recycling/Litter Control Account—		
State Appropriation	\$	13,193,000
State Drought Preparedness Account—State		
Appropriation	\$	((675,000))
		<u>350,000</u>
Salmon Recovery Account—State		
Appropriation	\$	1,120,000
State and Local Improvements Revolving Account		
(Water Supply Facilities)—State		
Appropriation	\$	557,000
Water Quality Account—State Appropriation	\$	3,881,000
Wood Stove Education and Enforcement Account—		
State Appropriation	\$	551,000
Worker and Community Right-to-Know Account—		
State Appropriation	\$	3,155,000
State Toxics Control Account—State		
Appropriation	\$	((48,369,000))
		<u>48,608,000</u>
State Toxics Control Account—Private/Local		
Appropriation	\$	377,000
Local Toxics Control Account—State		
Appropriation	\$	4,587,000
Water Quality Permit Account—State		
Appropriation	\$	21,763,000

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Underground Storage Tank Account—State		
Appropriation	\$	2,475,000
Environmental Excellence Account—State		
Appropriation	\$	20,000
Biosolids Permit Account—State Appropriation	\$	572,000
Hazardous Waste Assistance Account—State		
Appropriation	\$	3,943,000
Air Pollution Control Account—State		
Appropriation	\$	4,576,000
Oil Spill Administration Account—State		
Appropriation	\$	9,172,000
Air Operating Permit Account—State		
Appropriation	\$	3,549,000
Freshwater Aquatic Weeds Account—State		
Appropriation	\$	1,430,000
Oil Spill Response Account—State		
Appropriation	\$	7,078,000
Metals Mining Account—State Appropriation	\$	43,000
Water Pollution Control Revolving Account—		
State Appropriation	\$	439,000
Water Pollution Control Revolving Account—		
Federal Appropriation	\$	2,200,000
TOTAL APPROPRIATION	\$	(278,591,000)
		<u>278,473,000</u>

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

(1) \$3,432,000 of the general fund—state appropriation for fiscal year 2000, \$3,438,000 of the general fund—state appropriation for fiscal year 2001, \$394,000 of the general fund—federal appropriation, \$2,070,000 of the oil spill administration account—state appropriation, \$819,000 of the state toxics control account—state appropriation, and \$3,686,000 of the water quality permit account—state appropriation are provided solely for the implementation of the Puget Sound work plan and agency action items DOE-01, DOE-02, DOE-03, DOE-05, DOE-06, DOE-07, DOE-08, and DOE-09.

(2) \$170,000 of the oil spill administration account appropriation is provided solely for implementation of the Puget Sound work plan action item UW-02 through a contract with the University of Washington's sea grant program to develop an educational program targeted to small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas.

(3) \$374,000 of the general fund—state appropriation for fiscal year 2000 and \$283,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the department to digitize water rights documents and to provide this information to watershed planning groups.

(4) \$1,566,000 of the general fund—federal appropriation, \$1,033,000 of the general fund—private/local appropriation, and \$919,000 of the water quality account appropriation are provided to employ residents of the state between eighteen and twenty-five years of age in activities to enhance Washington's natural, historic, environmental, and recreational resources.

(5) \$250,000 of the general fund—state appropriation for fiscal year 2000 is provided solely for study of the impacts of gravel removal on the hydrology of Maury Island. The study shall consider impacts to the nearshore environment and aquifer recharge, and assess the potential for groundwater or marine sediment contamination. The department shall contract for the study, which shall be completed by June 30, 2000.

(6) \$250,000 of the general fund—state appropriation for fiscal year 2000 is provided solely for a study of the impacts of gravel deposit on the Highline aquifer. The study shall consider impacts to instream flow and sedimentation of Des Moines, Miller, and Walker creeks. The department shall contract for the study, which shall be completed by June 30, 2000.

(7) The entire freshwater aquatic weeds account appropriation shall be distributed according to the provisions of RCW 43.21A.660. Funding may be provided for chemical control of Eurasian watermilfoil.

(8) \$15,000 of the general fund—state appropriation for fiscal year 2000 and \$15,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to monitor and address, in coordination with the marine operations division of the department of transportation, odor problems in Fautleroy Cove.

(9) \$144,000 of the general fund—state appropriation for fiscal year 2000 and \$133,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for water quality activities related to forest practices.

(10) \$100,000 of the general fund—state appropriation for fiscal year 2000 is provided solely for the department to form an advisory committee for the purpose of updating the department's storm water management plan and the Puget Sound storm water management manual. The advisory committee shall be appointed no later than September 1, 1999, and it shall provide its recommendations on storm water management to the legislature by December 31, 2000.

(11) \$383,000 of the general fund—state appropriation for fiscal year 2000 and \$384,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for an agency permit assistance center, including four regional permit assistance offices.

(12) \$438,000 of the general fund—state appropriation for fiscal year 2000, \$1,025,000 of the general fund—state appropriation for fiscal year 2001, and \$1,870,000 of the general fund—federal appropriation are provided solely for the establishment of total maximum daily loads for water bodies across the state, and for pilot projects to evaluate the ability of existing voluntary and regulatory programs to improve water quality in water quality limited segments listed pursuant to section 303(d) of the federal clean water act. In areas with a ground

water management area, total maximum daily loads that include a ground water element will be done in cooperation with the ground water management area process. Pilot projects shall include the following allocations from the general fund—state amounts provided in this subsection: \$100,000 shall be provided to a conservation district in the Palouse region; \$100,000 shall be provided to the Lake Whatcom management committee through the city of Bellingham; and \$250,000 shall be provided to the Roza-Sunnyside irrigation district joint board of control. Each pilot project sponsor shall provide a report to the legislature by January 1, 2001, describing the water quality goals of the project, how the goals relate to meeting state water quality standards, the strategies to accomplish those goals, and the method of evaluating project effectiveness. The pilot project sponsors shall also submit final reports to the legislature at project completion.

(13) \$591,000 of the general fund—state appropriation for fiscal year 2000 and \$1,131,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to process water rights applications.

(14) \$414,000 of the general fund—state appropriation for fiscal year 2000 and \$383,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for technical assistance and project review for water conservation and reuse projects.

(15) The entire salmon recovery account appropriation is provided to increase compliance with existing water quality and water resources laws.

(16) \$4,250,000 of the general fund—state appropriation for fiscal year 2000 and \$4,750,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for grants to local governments to conduct watershed planning. Of the general fund—state amounts provided in this subsection: (a) \$500,000 is provided solely for a grant to the Methow river planning unit to develop baseline hydrological data for the Methow river; and (b) \$85,000 is provided for the lower Yakima/Naches/upper Yakima planning unit contingent upon recommendations of the governor's fact finder that a dual watershed assessment process is necessary. If such a recommendation is not provided, this amount is available for the purposes of this subsection.

(17) \$100,000 of the general fund—state appropriation for fiscal year 2000 and \$82,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the department, in cooperation with the department of fish and wildlife, to establish fish and habitat index monitoring sites to measure the effectiveness of salmon recovery activities.

(18) \$276,000 of the general fund—state appropriation for fiscal year 2000 and \$207,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to implement Senate Bill No. 5424 (aquatic plant management). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(19) \$500,000 of the general fund—state appropriation for fiscal year 2000 and \$500,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the continuation of the southwest Washington coastal erosion study.

(20) \$638,000 of the oil spill administration account appropriation is provided solely to implement Substitute House Bill No. 2247 (oil spill response tax). Of this amount: (a) \$120,000 is provided solely for spill response equipment; (b) \$307,000 is provided solely to develop an oil spill risk management plan; and (c) \$211,000 is provided solely for spills information management improvements. If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(21) \$145,000 of the general fund—state fiscal year 2000 appropriation and \$145,000 of the general fund—state fiscal year 2001 appropriation are provided solely for training and technical assistance to support the activities of county water conservancy boards.

(22) \$3,154,000 of the general fund—state appropriation for fiscal year 2000 and \$6,649,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to maintain the state's air quality program. Within the funds provided in this subsection, the department shall maintain funding for local air pollution control authorities at no less than ninety percent of the level of grants provided prior to January 1, 2000.

(23) \$749,000 of the public safety and education account appropriation for fiscal year 2001 is provided solely for methamphetamine lab clean up activities.

(24) \$300,000 of the state drought preparedness account—state appropriation for fiscal year 2001 is provided solely for a preconstruction and feasibility analysis of the Roza irrigation district off-stream storage project at Washout canyon. Moneys may be expended from the amount provided in this subsection only to the extent that matching funds in cash and in-kind contributions are provided by the Roza irrigation district. If this match is not provided by the district, the amount provided in this subsection shall lapse.

(25) \$1,500,000 of the state toxics control account appropriation is provided solely for cleanup actions related to the Everett smelter site in the city of Everett. The department shall seek recovery of the funds expended for this purpose from the liable parties by way of a settlement agreement or court action under the authority of chapter 70.105D RCW, the model toxics control act. Moneys collected as a result of a cost recovery action at the Everett smelter site shall be used first to reimburse the local toxics control account for the total amount of this appropriation. This appropriation is the result of a one-time loan from the local toxics control account and does not imply that the legislature will use this loan source or the state toxics control account for future cleanup of the Everett smelter site.

(26) (~~(\$375,000)~~) \$50,000 of the state drought preparedness account—state appropriation is provided solely for an environmental impact statement of the Pine Hollow reservoir project to be conducted in conjunction with the local irrigation district.

(27) \$150,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for creating the task force on water storage. The purpose of the

task force is to examine the role of increased water storage in providing water supplies to meet the needs of fish, population growth, and economic development, and to enhance the protection of people's lives and their property and the protection of aquatic habitat through flood control facilities. For this purpose, increased storage may be in the form of surface storage including off-stream storage, underground storage, or the enlargement or enhancement of existing structures. The task force shall also examine means of providing funding for increased water storage.

The department of ecology shall provide staff support for the task force and the director of the department of ecology shall convene the first meeting of the task force not less than thirty days after the effective date of this section.

No member of the task force shall receive compensation, per diem, or reimbursement of expenses from the task force or the department of ecology for his or her activities as a member of the task force. However, each may receive such compensation, per diem, and/or reimbursement as is authorized by the entity he or she is employed by, is appointed from, or represents on the task force.

Following its examination, the task force shall report its recommendations to the appropriate committees of the legislature by December 31, 2000.

(28) Within the funds appropriated in this section, the department shall develop for review by the legislature a proposed long-term strategy to address persistent, bio-accumulative and toxic chemicals in the environment. The department shall submit its proposal to the appropriate legislative committees by December 30, 2000.

(29) \$1,650,000 of the general fund—state appropriation for fiscal year 2001 is provided solely to the oil spill administration account to be used for a rescue tug. By December 1, 2000, the department shall report to the appropriate fiscal committees of the legislature on the activities of the dedicated rescue tug. The report shall include information on rescues, assists, or responses performed by the tug. The report shall also indicate the class of vessels involved and the nature of the rescue, assist, or response.

Sec. 302. 2000 2nd sp.s. c 1 s 302 (uncodified) is amended to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

General Fund—State Appropriation (FY 2000)	\$	27,522,000
General Fund—State Appropriation (FY 2001)	\$	((28,227,000))
		<u>28,259,000</u>
General Fund—Federal Appropriation	\$	2,113,000
General Fund—Private/Local Appropriation	\$	((59,000))
		<u>167,000</u>
Winter Recreation Program Account—State		
Appropriation	\$	763,000
Off Road Vehicle Account—State Appropriation	\$	264,000
Snowmobile Account—State Appropriation	\$	3,653,000
Aquatic Lands Enhancement Account—State		

Appropriation	\$	325,000
Public Safety and Education Account—State		
Appropriation	\$	48,000
Water Trail Program Account—State		
Appropriation	\$	14,000
Parks Renewal and Stewardship Account—		
State Appropriation	\$	25,907,000
TOTAL APPROPRIATION	\$	((88,895,000))
		<u>89,035,000</u>

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

(1) \$189,000 of the aquatic lands enhancement account appropriation is provided solely for the implementation of the Puget Sound work plan agency action items P&RC-01 and P&RC-03.

(2) \$65,000 of the general fund—state appropriation for fiscal year 2000 and \$71,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the state parks and recreation commission to meet its responsibilities under the Native American graves protection and repatriation act (P.L. 101-601).

(3) \$2,000,000 of the parks renewal and stewardship account appropriation is dependent upon the parks and recreation commission generating revenue to the account in excess of \$26,000,000 for the biennium. These funds shall be used for deferred maintenance and visitor and ranger safety activities.

(4) \$772,000 of the general fund—state appropriation for fiscal year 2000 and \$849,000 of the general fund—state appropriation for fiscal year 2001 are provided to employ residents of the state between eighteen and twenty-five years of age in activities to enhance Washington's natural, historic, environmental, and recreational resources.

(5) Fees approved by the state parks and recreation commission in 1998 for camping, group camping, extra vehicles, and the sno-park daily permit are authorized to exceed the fiscal growth factor under RCW 43.135.055.

(6) \$79,000 of the general fund—state appropriation for fiscal year 2000 and \$79,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for a grant for the operation of the Northwest avalanche center.

(7) The state parks and recreation commission may increase fees adopted prior to January 1, 2000, for implementation on or after July 1, 2000, in excess of the fiscal growth factor under RCW 43.135.055.

(8) \$25,000 of the general fund—state appropriation for fiscal year 2000 and \$75,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for a study on existing and future recreational needs and opportunities on the west slope of the Cascade foothills. The study shall include an inventory of existing land and facilities, an assessment of projected demand, and recommendations for regional coordination among public and private outdoor recreation providers to promote expanded recreation opportunities within the

Cascade foothills. The study shall be submitted to the governor and the appropriate committees of the legislature by June 30, 2001.

Sec. 303. 2000 2nd sp.s. c 1 s 305 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

General Fund—State Appropriation (FY 2000)	\$	42,616,000
General Fund—State Appropriation (FY 2001)	\$	((44,567,000))
		<u>45,212,000</u>
General Fund—Federal Appropriation	\$	((37,380,000))
		<u>55,005,000</u>
General Fund—Private/Local Appropriation	\$	((16,800,000))
		<u>23,850,000</u>
Off Road Vehicle Account—State		
Appropriation	\$	490,000
Aquatic Lands Enhancement Account—State		
Appropriation	\$	5,992,000
Public Safety and Education Account—State		
Appropriation	\$	586,000
Recreational Fisheries Enhancement Account—		
State Appropriation	\$	3,596,000
Salmon Recovery Account—State		
Appropriation	\$	10,105,000
Warm Water Game Fish Account—State		
Appropriation	\$	((2,499,000))
		<u>2,899,000</u>
Eastern Washington Pheasant Enhancement Account—		
State Appropriation	\$	851,000
Wildlife Account—State Appropriation	\$	((41,133,000))
		<u>42,223,000</u>
Wildlife Account—Federal Appropriation	\$	38,040,000
Wildlife Account—Private/Local		
Appropriation	\$	15,072,000
Game Special Wildlife Account—State		
Appropriation	\$	1,939,000
Game Special Wildlife Account—Federal		
Appropriation	\$	9,603,000
Game Special Wildlife Account—Private/Local		
Appropriation	\$	350,000
Environmental Excellence Account—State		
Appropriation	\$	15,000
Regional Fisheries Salmonid Recovery Account—		
Federal Appropriation	\$	1,750,000
Oil Spill Administration Account—State		
Appropriation	\$	969,000

TOTAL APPROPRIATION	\$	((274,353,000))
		<u>301,163,000</u>

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

(1) \$1,252,000 of the general fund—state appropriation for fiscal year 2000 and \$1,244,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the implementation of the Puget Sound work plan agency action items DFW-01, DFW-02, DFW-03, DFW-04, and DFW-05.

(2) \$776,000 of the salmon recovery account appropriation is provided solely for the department’s review of forest practices applications and related hydraulic permit applications.

(3) \$1,500,000 of the salmon recovery account appropriation is provided solely for the department to update the salmon and steelhead stock inventory and, in cooperation with the department of ecology, to establish fish and habitat index monitoring sites to measure the effectiveness of salmon recovery activities.

(4) \$232,000 of the general fund—state appropriation for fiscal year 2000 and \$232,000 of the general fund—state appropriation for fiscal year 2001 are provided for the control of European green crab (*Carcinus maenas*). The department shall submit a report to the governor and the appropriate legislative committees by September 1, 2000, evaluating the effectiveness of various control strategies and providing recommendations on long-term control strategies. \$248,000 of this amount is for implementation of Puget Sound work plan and agency action item DFW-23.

(5) \$191,000 of the general fund—state appropriation for fiscal year 2000 and \$191,000 of the general fund—state appropriation for fiscal year 2001 are provided for noxious weed control and survey activities on department lands. Of this amount, \$48,000 is provided for the biological control of yellowstar thistle.

(6) All salmon habitat restoration and protection projects proposed for funding by regional fisheries enhancement groups shall be submitted by January 1st or July 1st of each year for review to the salmon recovery funding board.

(7) \$2,340,000 of the salmon recovery account appropriation and \$7,000,000 of the general fund—federal appropriation are provided solely to implement a license buy-back program for commercial fishing licenses.

(8) \$511,000 of the general fund—state appropriation for fiscal year 2000 and \$488,000 of the general fund—state appropriation for fiscal year 2001 are provided to employ residents of the state between eighteen and twenty-five years of age in activities to enhance Washington’s natural, historic, environmental, and recreational resources.

(9) Any indirect cost reimbursement received by the department from federal grants must be spent on agency administrative activities and cannot be redirected to direct program activities.

(10) \$43,000 of the general fund—state appropriation for fiscal year 2000 and \$42,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for staffing and operation of the Tennant Lake interpretive center.

(11) \$32,000 of the general fund—state appropriation for fiscal year 2000 and \$33,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to support the activities of the aquatic nuisance species coordination committee to foster state, federal, tribal, and private cooperation on aquatic nuisance species issues. The committee shall strive to prevent the introduction of nonnative aquatic species and to minimize the spread of species that are introduced.

(12) \$100,000 of the general fund—state appropriation for fiscal year 2001 is provided solely to implement Senate Bill No. 5508 (crab catch record cards). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(13) \$6,440,000 of the general fund—state appropriation for fiscal year 2000, \$5,796,000 of the general fund—state appropriation for fiscal year 2001, \$12,260,000 of the wildlife account—state appropriation, \$710,000 of the aquatic lands enhancement account appropriation, and \$500,000 of the public safety and education account appropriation are provided solely for operation of the enforcement division. Within these funds, the department shall emphasize enforcement of laws related to protection of fish habitat and the illegal harvest of salmon and steelhead. Within these funds, the department shall provide support to the department of health to enforce state shellfish harvest laws.

(14) \$500,000 of the salmon recovery account, \$624,000 of the general fund—state appropriation for fiscal year 2000, and \$624,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the department to implement a hatchery endangered species act response. The strategy shall include emergency hatchery responses and retrofitting of hatcheries for salmon recovery.

(15) \$45,000 of the general fund—state appropriation for fiscal year 2000 and \$46,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for operation of the Rod Meseberg (ringold) warm water fish hatchery to implement House Bill No. 1716 (warm water fish culture). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(16) \$2,500,000 of the salmon recovery account appropriation is provided solely for grants to lead entities established in accordance with RCW 75.46.060.

(17) \$200,000 of the salmon recovery account appropriation is provided solely for salmon and steelhead predation control and bycatch monitoring strategies.

(18) \$50,000 of the general fund—state appropriation for fiscal year 2000, \$50,000 of the general fund—state appropriation for fiscal year 2001, and \$200,000 of the wildlife account—state appropriation are provided solely for field surveys and harvest management for Washington elk herds.

(19) \$155,000 of the general fund—state appropriation for fiscal year 2000 and \$345,000 of the general fund—state appropriation for fiscal year 2001 are provided

solely to purchase and implement the automated recreational license data base system.

(20) \$1,400,000 of the general fund—state appropriation for fiscal year 2000 and \$1,400,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for fish passage barrier and screening technical assistance, engineering services, and construction assistance for local governments, state agencies, volunteer groups, and regional fisheries enhancement groups.

(21) \$1,500,000 of the salmon recovery account appropriation is provided solely for local salmon recovery technical assistance. Technical assistance shall be coordinated among all state agencies including the conservation commission, department of fish and wildlife, department of ecology, department of health, department of agriculture, department of transportation, state parks and recreation, interagency committee for outdoor recreation, governor's salmon recovery office, Puget Sound water quality action team, department of community, trade, and economic development, and department of natural resources.

(22) \$400,000 of the wildlife account appropriation is provided solely to implement House Bill No. 1681 (trout purchase by state). The fish and wildlife commission may authorize expenditure of these funds only if the costs of the program will be recovered by the increase in license sales directly attributable to the planting of privately grown trout. If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(23) \$2,000,000 of the aquatic lands enhancement account appropriation is provided for cooperative volunteer projects.

(24) \$245,000 of the state wildlife account appropriation is provided solely for winter feeding of deer and winter range rehabilitation on the Chiliwist wildlife area.

(25) Within the appropriation from the wildlife account the department shall, at a minimum, operate Reiter Pond at fiscal year 2000 production levels.

(26) Within the appropriations in this section the department shall, at a minimum, operate the Colville hatchery at fiscal year 2000 production levels.

(27) \$384,000 of the general fund—private/local appropriation is provided solely to implement Senate Bill No. 6277 (authorizing cost reimbursement agreements). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(28) \$400,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the implementation of the Puget Sound work plan agency action items DFW-10 and DFW-18, implementing a comprehensive Puget Sound ground fish and forage fish recovery plan.

(29) \$203,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for data collection and analysis related to Lake Washington sockeye.

(30) \$800,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for additional enforcement staff to respond and take appropriate action in response to public complaints regarding bear and cougar.

(31) \$500,000 of the general fund—state appropriation for fiscal year 2001 and \$200,000 of the wildlife account—state appropriation are provided solely to implement an endangered species act strategy for state hatchery operations, including fish passage improvements, screen compliance, rearing strategies, and restoration of production.

(32) \$789,000 of the salmon recovery account appropriation is provided solely for screening of irrigation diversions and projects to improve instream flows in the Methow river basin.

(33) \$645,000 of the general fund—state appropriation is provided solely for fire suppression costs during the 2000 fire season and to feed elk and deer.

Sec. 304. 2000 2nd sp.s. c 1 s 306 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

General Fund—State Appropriation (FY 2000)	\$	25,784,000
General Fund—State Appropriation (FY 2001)	\$	((28,576,000))
		<u>33,674,000</u>
General Fund—Federal Appropriation	\$	((2,865,000))
		<u>6,511,000</u>
General Fund—Private/Local Appropriation	\$	1,604,000
Forest Development Account—State Appropriation	\$	((48,086,000))
		<u>48,056,000</u>
Off Road Vehicle Account—State Appropriation	\$	3,668,000
Surveys and Maps Account—State Appropriation	\$	2,221,000
Aquatic Lands Enhancement Account—State Appropriation	\$	2,656,000
Resources Management Cost Account—State Appropriation	\$	((79,097,000))
		<u>79,032,000</u>
Surface Mining Reclamation Account—State Appropriation	\$	1,435,000
Disaster Response Account—State Appropriation	\$	2,651,000
Salmon Recovery Account—State Appropriation	\$	3,483,000
Aquatic Land Dredged Material Disposal Site Account—State Appropriation	\$	1,014,000
Natural Resource Conservation Areas Stewardship Account Appropriation	\$	1,100,000

Air Pollution Control Account—State		
Appropriation	\$	687,000
Metals Mining Account—State Appropriation	\$	63,000
Agricultural College Trust Management Account		
Appropriation	\$	((+736,000))
		<u>1,913,000</u>
TOTAL APPROPRIATION	\$	((206,426,000))
		<u>215,552,000</u>

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

(1) \$18,000 of the general fund—state appropriation for fiscal year 2000, \$18,000 of the general fund—state appropriation for fiscal year 2001, and \$1,058,000 of the aquatic lands enhancement account appropriation are provided solely for the implementation of the Puget Sound work plan and agency action items DNR-01, DNR-02, and DNR-04.

(2) \$7,304,000 of the general fund—state appropriation for fiscal year 2000, \$7,304,000 of the general fund—state appropriation for fiscal year 2001, and \$2,651,000 of the disaster response account—state appropriation are provided solely for emergency fire suppression.

(3) \$331,000 of the general fund—state appropriation for fiscal year 2000 and \$339,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for geologic studies to evaluate ground stability in high growth areas and to provide geologic expertise to small communities.

(4) \$663,000 of the general fund—state appropriation for fiscal year 2000 and \$689,000 of the general fund—state appropriation for fiscal year 2001 are provided to employ residents of the state between eighteen and twenty-five years of age in activities to enhance Washington’s natural, historic, environmental, and recreational resources.

(5) \$3,483,000 of the salmon recovery account appropriation and \$3,000,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for implementation of chapter 4, Laws of 1999 sp. sess.

(a) Of the salmon recovery account appropriation in this subsection:

(i) \$2,580,000 is provided solely for costs associated with adopting and implementing new forest rules for protection of riparian habitat and water quality; road maintenance and abandonment planning; fish and water quality compliance staff; geographic information systems improvements for forest roads and hydrography; and updating the forest practices permit application system; and

(ii) \$903,000 is provided solely to implement sections 501 through 505 of chapter 4, Laws of 1999 sp. sess., including:

- (A) The establishment of a small landowner office;
- (B) Administration of the forestry riparian easement program;
- (C) Contracting with private consultants to perform timber cruises;

(D) Development of small landowner options through alternate management plans;

(E) Evaluation of cumulative impacts of alternate plans;

(F) Establishment of a small landowners advisory committee;

(G) Development of criteria for determining compensation for qualifying timber; and

(H) Collection and reporting of the statistical information on small landowners as directed in section 503 of chapter 4, Laws of 1999 sp. sess.

(b) Of the general fund—state appropriation in this subsection:

(i) \$2,128,000 is provided solely for cooperative monitoring, evaluation, and research projects; hazard zonation; adopting and implementing new forest rules to protect riparian habitat and water quality; and geographic information systems improvements for forest roads and hydrography; and

(ii) \$872,000 is provided solely for the department to implement sections 501 through 505 of chapter 4, laws of 1999 sp. sess., including providing technical assistance for small forest landowners for the following:

(A) Determining streamside buffers;

(B) Preparation of road management plans;

(C) Participation in watershed analysis and adaptive management;

(D) Determining culvert replacement needs; and

(E) Developing alternative plans to comply with forest and fish rules.

(6) \$44,000 of the resource management cost account appropriation is provided solely for maintenance and safety improvements at the Gull Harbor marine station. The department shall develop a plan for use or disposal of the marine station by December 1, 1999.

(7) \$582,000 of the resource management cost account appropriation is provided solely to expand geoduck resource management activities.

(8) \$172,000 of the resource management cost account appropriation is provided solely to convert aquatic land maps and records to an electronic format.

(9) \$100,000 of the general fund—state appropriation for fiscal year 2000, \$100,000 of the general fund—state appropriation for fiscal year 2001, and \$400,000 of the aquatic lands enhancement account appropriation are provided solely for spartina control. Within these amounts, the department shall continue support for a field study of biological control methods.

(10) \$2,000,000 of the general fund—state appropriation for fiscal year 2000 and \$2,000,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for fire protection activities.

(11) \$450,000 of the resource management cost account appropriation is provided solely for the control and eradication of class B designate weeds on state lands.

(12) \$1,100,000 of the natural resources conservation areas stewardship account is provided solely to the department for planning, management, and stewardship of natural area preserves and natural resources conservation areas.

(13) \$384,000 of the general fund—private/local appropriation is provided solely to implement Senate Bill No. 6277 (authorizing cost reimbursement agreements). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

~~((+5))~~ (14) \$2,000,000 of the forest development account appropriation is provided solely for immediate road decommissioning, maintenance, and repair in the Lake Whatcom watershed.

~~((+6))~~ (15) The department shall submit a report of the uses of the access road revolving fund to the legislature and the office of financial management no later than December 1, 2000. The report shall include the following:

- (a) Distribution of funds from fiscal year 1996 through fiscal year 2000;
- (b) Types of activities funded;
- (c) Method for prioritizing road projects, state-wide and by region; and
- (d) Proposed plan for road maintenance and repair in the 2001-2003 biennium.

(16) \$5,143,000 of the general fund—state appropriation and \$3,646,000 of the general fund—federal appropriation are provided solely for the costs of fighting wildfires on state and federal lands during the 2000 fire season.

**PART IV
TRANSPORTATION**

Sec. 401. 2000 2nd sp.s. c 1 s 401 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING

General Fund—State Appropriation (FY 2000)	\$ 5,630,000
General Fund—State Appropriation (FY 2001)	((4,871,000))
	<u>5,023,000</u>
Architects' License Account—State	
Appropriation	((678,000))
	<u>668,000</u>
Cemetery Account—State Appropriation	205,000
Profession Engineers' Account—State	
Appropriation	2,703,000
Real Estate Commission—State Appropriation	((6,824,000))
	<u>6,784,000</u>
Master License Account—State Appropriation	7,317,000
Uniform Commercial Code Account—State	
Appropriation	3,448,000
Real Estate Education Account—State	
Appropriation	630,000
Funeral Directors and Embalmers Account—State	
Appropriation	472,000
Washington Real Estate Research Account	
Appropriation	313,000

TOTAL APPROPRIATION \$ ~~((33,091,000))~~
33,193,000

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

(1) \$150,000 of the general fund—state appropriation for fiscal year 2000, \$25,000 of the general fund—state appropriation for fiscal year 2001, and \$100,000 of the professional engineers' account appropriation are provided solely for Second Substitute Senate Bill No. 5821 (on-site wastewater treatment). If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(2) \$313,000 of the Washington real estate research account appropriation is provided solely for the implementation of Engrossed Senate Bill No. 5720 (real estate research). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

Sec. 402. 2000 2nd sp.s. c 1 s 402 (uncodified) is amended to read as follows:

FOR THE STATE PATROL

General Fund—State Appropriation (FY 2000)	\$	21,496,000
General Fund—State Appropriation (FY 2001)	\$	((20,826,000))
		<u>20,939,000</u>
General Fund—Federal Appropriation	\$	3,999,000
General Fund—Private/Local Appropriation	\$	344,000
Death Investigations Account—State		
Appropriation	\$	3,689,000
Public Safety and Education Account—State		
Appropriation	\$	9,611,000
County Criminal Justice Assistance Account—State		
Appropriation	\$	2,887,000
Municipal Criminal Justice Assistance Account—		
State Appropriation	\$	1,118,000
Fire Service Trust Account—State		
Appropriation	\$	125,000
Disaster Response Account—State		
Appropriation	\$	1,386,000
Fire Service Training Account—State		
Appropriation	\$	6,730,000
State Toxics Control Account—State		
Appropriation	\$	442,000
Violence Reduction and Drug Enforcement Account—		
State Appropriation	\$	260,000
Fingerprint Identification Account—State		
Appropriation	\$	2,958,000
TOTAL APPROPRIATION	\$	((75,871,000))
		<u>75,984,000</u>

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

(1) \$255,000 of the general fund—state appropriation for fiscal year 2000 and \$95,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for replacement of fire training equipment at the fire service training academy.

(2) \$604,000 of the public safety and education account appropriation is provided solely for implementation of Second Substitute Senate Bill No. 5108 (missing/exploited children). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(3) \$2,816,000 of the death investigation account appropriation is provided solely for the implementation of Substitute House Bill No. 1560 (forensic lab services). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse.

(4) \$2,900,000 of the fire service training account appropriation is provided solely for the implementation of Second Substitute Senate Bill No. 5102 (fire fighter training). If the bill is not enacted by June 30, 1999, the amount provided in this subsection shall lapse. In providing the fire fighter one training program required by the bill, the state patrol shall, to the extent possible, utilize existing public and private fire fighting training facilities in southeastern Washington.

(5) \$354,000 of the public safety and education account appropriation is provided solely for additional law enforcement and security coverage on the west capitol campus.

(6) \$66,000 of the general fund—state appropriation for fiscal year 2000 and \$58,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for activities of the missing children's clearinghouse as related to services performed under subsection 202(1) of this act. If that subsection is not enacted, the amount provided in this subsection shall lapse.

(7) When a program within the agency is supported by more than one fund and one of the funds is the state general fund, the agency shall charge its expenditures in such a manner as to ensure that each fund is charged in proportion to its support of the program. The agency may adopt guidelines for the implementation of this subsection. The guidelines may account for federal matching requirements, budget provisos, or other requirements to spend other moneys in a particular manner.

(8) \$300,000 of the death investigations account—state appropriation is provided solely for the operation of the state toxicology laboratory. If House Bill No. 2330 (liquor disbursements) is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(9) \$1,386,000 of the disaster response account—state appropriation is provided solely for costs associated with the state patrol's participation in support of the world trade organization conference.

(10) \$125,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 2420 (oil/gas pipeline safety). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

**PART V
EDUCATION**

Sec. 501. 2000 2nd sp.s. c 1 s 501 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR STATE ADMINISTRATION

General Fund—State Appropriation (FY 2000)	\$	34,844,000
General Fund—State Appropriation (FY 2001)	\$	42,315,000
General Fund—Federal Appropriation	\$	((83,099,000))
		<u>93,143,000</u>
TOTAL APPROPRIATION	\$	((+60,258,000)) <u>170,302,000</u>

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

(1) AGENCY OPERATIONS

(a) \$404,000 of the general fund—state appropriation for fiscal year 2000 and \$403,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities.

(b) \$348,000 of the general fund—state appropriation is provided for administration of the traffic safety education program, including in-service training related to instruction in the risks of driving while under the influence of alcohol and other drugs.

(c) \$128,000 of the general fund—state appropriation is provided solely for increased costs of providing a norm-referenced test to all third grade students and retests of certain third grade students and other costs in accordance with chapter 319, Laws of 1998 (student achievement).

(d) \$145,000 of the general fund—state appropriation is provided for an institutional education program director.

(2) STATE-WIDE PROGRAMS

(a) \$2,524,000 of the general fund—state appropriation is provided for in-service training and educational programs conducted by the Pacific Science Center. Of this amount, \$350,000 is provided to add a math van.

(b) \$63,000 of the general fund—state appropriation is provided for operation of the Cispus environmental learning center.

(c) \$2,754,000 of the general fund—state appropriation is provided for educational centers, including state support activities. \$100,000 of this amount is provided to help stabilize funding through distribution among existing education

centers that are currently funded by the state at an amount less than \$100,000 a biennium.

(d) \$100,000 of the general fund—state appropriation is provided for an organization in southwest Washington that received funding from the Spokane educational center in the 1995-97 biennium and provides educational services to students who have dropped out of school.

(e) \$5,923,000 of the general fund—state appropriation is provided solely for matching grants to enhance security in schools. Not more than seventy-five percent of a district's total expenditures for school security in any school year may be paid from a grant under this subsection. The grants shall be expended solely for the costs of employing or contracting for building security monitors in schools during school hours and school events. Of the amount provided in this subsection, at least \$2,850,000 shall be spent for grants to districts that, during the 1988-89 school year, employed or contracted for security monitors in schools during school hours. However, these grants may be used only for increases in school district expenditures for school security over expenditure levels for the 1988-89 school year.

(f) \$5,649,000 of the general fund—state appropriation for FY 2001 is provided for school safety allocations to school districts. The amount provided in this subsection (2)(f) is subject to the following conditions and limitations:

(i) School districts may use funds allocated under this subsection (2)(f) for school safety purposes for the 2000-01 school year, including but not limited to the following: Planning; training; equipment; before, during, and after-school safety; and minor building renovations.

(ii) Allocations to school districts shall be made beginning on July 1, 2000, at a maximum rate of \$10.00 multiplied by the full-time equivalent enrollment of the district. A district's allocation shall be reduced by any amount awarded to that district for security and safety grants under section 501 (2)(e) of this act and under sections 1 (2) and 2 of chapter 12, Laws of 1999 sp. sess. For purposes of this subsection "full-time equivalent enrollment" means the average K-12 full-time equivalent enrollment from September 1, 1999, to May 31, 2000, or 150 full-time equivalent students, whichever is greater.

(g) \$200,000 of the general fund—state appropriation for fiscal year 2000, \$200,000 of the general fund—state appropriation for fiscal year 2001, and \$400,000 of the general fund—federal appropriation transferred from the department of health are provided solely for a program that provides grants to school districts for media campaigns promoting sexual abstinence and addressing the importance of delaying sexual activity, pregnancy, and childbearing until individuals are ready to nurture and support their children. Grants to the school districts shall be for projects that are substantially designed and produced by students. The grants shall require a local private sector match equal to one-half of the state grant, which may include in-kind contribution of technical or other

assistance from consultants or firms involved in public relations, advertising, broadcasting, and graphics or video production or other related fields.

(h) \$1,500,000 of the general fund—state appropriation for fiscal year 2000 and \$1,500,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for school district petitions to juvenile court for truant students as provided in RCW 28A.225.030 and 28A.225.035. Allocation of this money to school districts shall be based on the number of petitions filed.

(i) A maximum of \$300,000 of the general fund—state appropriation is provided for alcohol and drug prevention programs pursuant to RCW 66.08.180.

(j) \$5,702,000 of the general fund—state appropriation is provided solely for shared infrastructure costs, data equipment maintenance, and depreciation costs for operation of the K-20 telecommunications network.

(k) \$4,000,000 of the general fund—state appropriation is provided solely for a K-20 telecommunications network technical support system in the K-12 sector to prevent system failures and avoid interruptions in school utilization of the data processing and video-conferencing capabilities of the network. These funds may be used to purchase engineering and advanced technical support for the network. A maximum of \$650,000 may be expended for state-level administration and staff training on the K-20 network.

(l) \$50,000 of the general fund—state appropriation for fiscal year 2000 and \$50,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for allocation to the primary coordinators of the state geographic alliance to improve the teaching of geography in schools.

(m) \$2,000,000 of the general fund—state appropriation is provided for start-up grants for alternative programs and services that improve instruction and learning for at-risk students. Grants shall be awarded to applicants showing the greatest potential for improved student learning for at-risk students including:

(i) Students who are disruptive or have been suspended, expelled, or subject to other disciplinary actions;

(ii) Students with unexcused absences who need intervention;

(iii) Students who have left school; and

(iv) Students involved with the court system.

(n) \$1,600,000 of the general fund—state appropriation is provided for grants for magnet schools.

(o) \$4,300,000 of the general fund—state appropriation is provided for complex need grants. Grants shall be provided according to amounts shown in LEAP Document 30C as developed on April 27, 1997, at 03:00 hours.

(p) \$431,000 of the general fund—state appropriation is provided solely to implement Engrossed House Bill No. 2760 (educator quality). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(q) \$500,000 of the general fund—state appropriation for fiscal year 2000 and \$500,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for grants to schools and school districts to establish school safety plans.

(r) \$5,242,000 of the general fund—state is provided solely for a corps of nurses located at educational service districts, as determined by the superintendent of public instruction, to be dispatched to the most needy schools to provide direct care to students, health education, and training for school staff.

(s) \$50,000 of the general fund—state appropriation is provided as matching funds for district contributions to provide analysis of the efficiency of school district business practices.

(t) \$750,000 of the general fund—state appropriation is provided solely for computer system programming and upgrades to benefit the office of the superintendent of public instruction, schools, and school districts.

(u) \$21,000 of the general fund—state appropriation for fiscal year 2000 appropriation and \$21,000 of the general fund—state appropriation for fiscal year 2001 appropriation are provided solely for the increased costs resulting from Engrossed Second Substitute House Bill No. 1477 (school district organization). If the bill is not enacted by June 30, 1999, the amounts in this subsection shall lapse.

(v) \$1,500,000 of the general fund—state appropriation is provided solely for the excellence in mathematics training program as specified in Substitute House Bill No. 1569 (excellence in mathematics). If the bill is not enacted by June 30, 1999, the amount in this subsection shall lapse.

(w) \$2,000,000 of the general fund—state appropriation is provided solely for teacher institutes during the summer of 2000, programs, and administration costs, as provided for in Engrossed Second Substitute House Bill No. 2085 (disruptive students). If the bill is not enacted by June 30, 1999, the amount in this subsection shall lapse.

(x) \$200,000 of the general fund—state appropriation is provided solely for support for vocational student leadership organizations.

(y) \$1,100,000 of the general fund—state appropriation is provided for an equal matching grant to the Northeast vocational area cooperative to establish high-technology learning centers to provide college-level technology curriculum for high school students leading to an information technology certificate or degree. Only the following sources may be used as matching for the state funds: Private sector contributions; operating levy revenues; capital levy revenues; technology levy revenues; or other local funds not from federal or state sources.

(z) \$75,000 of the general fund—state appropriation is provided for speech pathology grants to charitable organizations as qualified under the internal revenue code and incorporated under the laws of the state of Washington. These grants shall be used for the purpose of providing childhood speech pathology by nationally certified speech pathologists to children who have demonstrated a lack of verbal communication skills and who would benefit from such a program. Speech pathology services shall be provided at no cost to the child receiving the benefits or to the parents or guardians of the child.

(aa) \$500,000 of the general fund—state appropriation is provided solely for competitive grants to school districts to obtain curriculum or programs that allow high school students to have access to internet-based curriculum that leads directly to higher education credits or provides preparation for tests that lead to higher education credit in subjects including but not limited to mathematics, languages, and science.

(bb) \$1,000,000 of the general fund—state appropriation for fiscal year 2000 and \$1,800,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for grants to school districts for programs to prepare high school students to achieve information technology industry skills certifications. The funds may be expended to provide or improve internet access; purchase and install networking or computer equipment; train faculty; or acquire curriculum materials. A match of cash or in-kind contributions from nonstate sources equal to at least half of the cash amount of the grant is required. To assure continuity of the curriculum with higher education institutions, the grant program will be designed and implemented by an interagency team comprised of representatives from the office of the superintendent of public instruction, the state board for community and technical colleges, the higher education coordinating board, and the office of financial management. School districts may apply for grants in cooperation with other school districts or community or technical colleges and must demonstrate in the grant application a cooperative relationship with a community or technical college in information technology programs. Preference for grants shall be made to districts with sound technology plans, which offer student access to computers outside of school hours, which demonstrate involvement of the private sector in information technology programs, and which serve the needs of low-income communities.

(cc) \$150,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the Washington civil liberties education program pursuant to Engrossed Second Substitute House Bill No. 1572 (civil liberties education). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(dd) \$150,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for the World War II oral history project pursuant to Substitute House Bill No. 2418 (WWII oral history project). If the bill is not enacted by June 30, 2000, the amount provided in this subsection shall lapse.

(ee) \$431,000 of the general fund—state appropriation is provided solely for the purchase of filtering servers necessary for districts to implement a computer technology filtering system for schools. Priority shall be given to districts that do not have any filtering systems in place. Funding shall be provided only at the request of that district's school board.

(ff) \$297,000 of the general fund—state appropriation is provided solely for training in oral medications administration. If Substitute Senate Bill No. 6328 (oral medications training) is enacted, the funds are provided to implement the

provisions of the bill. If the bill is not enacted by June 30, 2000, the superintendent shall provide training in administration of oral medications using the model program developed by the office of the superintendent of public instruction.

Sec. 502. 2000 2nd sp.s. c 1 s 502 (uncodified) is amended to read as follows:
**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR
 GENERAL APPORTIONMENT**

General Fund—State Appropriation (FY 2000)	\$	3,507,296,000
General Fund—State Appropriation (FY 2001)	\$	((3,480,701,000))
		<u>3,489,806,000</u>
TOTAL APPROPRIATION	\$	((6,987,997,000)) <u>6,997,102,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for certificated staff salaries for the 1999-00 and 2000-01 school years shall be determined using formula-generated staff units calculated pursuant to this subsection. Staff allocations for small school enrollments in (d) through (f) of this subsection shall be reduced for vocational full-time equivalent enrollments. Staff allocations for small school enrollments in grades K-6 shall be the greater of that generated under (a) of this subsection, or under (d) and (e) of this subsection. Certificated staffing allocations shall be as follows:

(a) On the basis of each 1,000 average annual full-time equivalent enrollments, excluding full-time equivalent enrollment otherwise recognized for certificated staff unit allocations under (c) through (f) of this subsection:

(i) Four certificated administrative staff units per thousand full-time equivalent students in grades K-12;

(ii) 49 certificated instructional staff units per thousand full-time equivalent students in grades K-3;

(iii) An additional 4.2 certificated instructional staff units for grades K-3 and an additional 7.2 certificated instructional staff units for grade 4. Any funds allocated for these additional certificated units shall not be considered as basic education funding;

(A) Funds provided under this subsection (2)(a)(iii) in excess of the amount required to maintain the statutory minimum ratio established under RCW 28A.150.260(2)(b) shall be allocated only if the district documents an actual ratio equal to or greater than 53.2 certificated instructional staff per thousand full-time equivalent students in grades K-4. For any school district documenting a lower certificated instructional staff ratio, the allocation shall be based on the district's actual grades K-4 certificated instructional staff ratio achieved in that school year, or the statutory minimum ratio established under RCW 28A.150.260(2)(b), if greater;

(B) Districts at or above 51.0 certificated instructional staff per one thousand full-time equivalent students in grades K-4 may dedicate up to 1.3 of the 53.2 funding ratio to employ additional classified instructional assistants assigned to basic education classrooms in grades K-4. For purposes of documenting a district's staff ratio under this section, funds used by the district to employ additional classified instructional assistants shall be converted to a certificated staff equivalent and added to the district's actual certificated instructional staff ratio. Additional classified instructional assistants, for the purposes of this subsection, shall be determined using the 1989-90 school year as the base year;

(C) Any district maintaining a ratio equal to or greater than 53.2 certificated instructional staff per thousand full-time equivalent students in grades K-4 may use allocations generated under this subsection (2)(a)(iii) in excess of that required to maintain the minimum ratio established under RCW 28A.150.260(2)(b) to employ additional basic education certificated instructional staff or classified instructional assistants in grades 5-6. Funds allocated under this subsection (2)(a)(iii) shall only be expended to reduce class size in grades K-6. No more than 1.3 of the certificated instructional funding ratio amount may be expended for provision of classified instructional assistants; and

(iv) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 4-12;

(b) For school districts with a minimum enrollment of 250 full-time equivalent students whose full-time equivalent student enrollment count in a given month exceeds the first of the month full-time equivalent enrollment count by 5 percent, an additional state allocation of 110 percent of the share that such increased enrollment would have generated had such additional full-time equivalent students been included in the normal enrollment count for that particular month;

(c)(i) On the basis of full-time equivalent enrollment in:

(A) Vocational education programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.08 certificated administrative staff units for each 19.5 full-time equivalent vocational students for the 1999-00 school year and the 2000-01 school year. Districts documenting staffing ratios of less than 1 certificated staff per 19.5 students shall be allocated the greater of the total ratio in subsections (2)(a)(i) and (iv) of this section or the actual documented ratio; and

(B) Skills center programs meeting the standards for skill center funding recommended by the superintendent of public instruction, January 1999, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(ii) Indirect cost charges, as defined by the superintendent of public instruction, to vocational-secondary programs shall not exceed 10 percent; and

(iii) Vocational full-time equivalent enrollment shall be reported on the same monthly basis as the enrollment for students eligible for basic support, and payments shall be adjusted for reported vocational enrollments on the same

monthly basis as those adjustments for enrollment for students eligible for basic support.

(d) For districts enrolling not more than twenty-five average annual full-time equivalent students in grades K-8, and for small school plants within any school district which have been judged to be remote and necessary by the state board of education and enroll not more than twenty-five average annual full-time equivalent students in grades K-8:

(i) For those enrolling no students in grades 7 and 8, 1.76 certificated instructional staff units and 0.24 certificated administrative staff units for enrollment of not more than five students, plus one-twentieth of a certificated instructional staff unit for each additional student enrolled; and

(ii) For those enrolling students in grades 7 or 8, 1.68 certificated instructional staff units and 0.32 certificated administrative staff units for enrollment of not more than five students, plus one-tenth of a certificated instructional staff unit for each additional student enrolled;

(e) For specified enrollments in districts enrolling more than twenty-five but not more than one hundred average annual full-time equivalent students in grades K-8, and for small school plants within any school district which enroll more than twenty-five average annual full-time equivalent students in grades K-8 and have been judged to be remote and necessary by the state board of education:

(i) For enrollment of up to sixty annual average full-time equivalent students in grades K-6, 2.76 certificated instructional staff units and 0.24 certificated administrative staff units; and

(ii) For enrollment of up to twenty annual average full-time equivalent students in grades 7 and 8, 0.92 certificated instructional staff units and 0.08 certificated administrative staff units;

(f) For districts operating no more than two high schools with enrollments of less than three hundred average annual full-time equivalent students, for enrollment in grades 9-12 in each such school, other than alternative schools:

(i) For remote and necessary schools enrolling students in any grades 9-12 but no more than twenty-five average annual full-time equivalent students in grades K-12, four and one-half certificated instructional staff units and one-quarter of a certificated administrative staff unit;

(ii) For all other small high schools under this subsection, nine certificated instructional staff units and one-half of a certificated administrative staff unit for the first sixty average annual full time equivalent students, and additional staff units based on a ratio of 0.8732 certificated instructional staff units and 0.1268 certificated administrative staff units per each additional forty-three and one-half average annual full time equivalent students.

Units calculated under (f)(ii) of this subsection shall be reduced by certificated staff units at the rate of forty-six certificated instructional staff units and four certificated administrative staff units per thousand vocational full-time equivalent students.

(g) For each nonhigh school district having an enrollment of more than seventy annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-8 program or a grades 1-8 program, an additional one-half of a certificated instructional staff unit; and

(h) For each nonhigh school district having an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-6 program or a grades 1-6 program, an additional one-half of a certificated instructional staff unit.

(3) Allocations for classified salaries for the 1999-00 and 2000-01 school years shall be calculated using formula-generated classified staff units determined as follows:

(a) For enrollments generating certificated staff unit allocations under subsection (2)(d) through (h) of this section, one classified staff unit for each three certificated staff units allocated under such subsections;

(b) For all other enrollment in grades K-12, including vocational full-time equivalent enrollments, one classified staff unit for each sixty average annual full-time equivalent students; and

(c) For each nonhigh school district with an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, an additional one-half of a classified staff unit.

(4) Fringe benefit allocations shall be calculated at a rate of 16.49 percent in the 1999-00 school year and 15.62 percent in the 2000-01 school year for certificated salary allocations provided under subsection (2) of this section, and a rate of 15.56 percent in the 1999-00 school year and 15.82 percent in the 2000-01 school year for classified salary allocations provided under subsection (3) of this section.

(5) Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504(2) of this act, based on the number of benefit units determined as follows:

(a) The number of certificated staff units determined in subsection (2) of this section; and

(b) The number of classified staff units determined in subsection (3) of this section multiplied by 1.152. This factor is intended to adjust allocations so that, for the purposes of distributing insurance benefits, full-time equivalent classified employees may be calculated on the basis of 1440 hours of work per year, with no individual employee counted as more than one full-time equivalent.

(6)(a) For nonemployee-related costs associated with each certificated staff unit allocated under subsection (2)(a), (b), and (d) through (h) of this section, there shall be provided a maximum of \$8,117 per certificated staff unit in the 1999-00 school year and a maximum of \$8,239 per certificated staff unit in the 2000-01 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(A) of this section, there shall be

provided a maximum of \$19,933 per certificated staff unit in the 1999-00 school year and a maximum of \$20,232 per certificated staff unit in the 2000-01 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(B) of this section, there shall be provided a maximum of \$15,467 per certificated staff unit in the 1999-00 school year and a maximum of \$15,699 per certificated staff unit in the 2000-01 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of \$365.28 for the 1999-00 school year and \$479.94 for the 2000-01 school year per allocated classroom teachers exclusive of salary increase amounts provided in section 504 of this act. Solely for the purposes of this subsection, allocated classroom teachers shall be equal to the number of certificated instructional staff units allocated under subsection (2) of this section, multiplied by the ratio between the number of actual basic education certificated teachers and the number of actual basic education certificated instructional staff reported state-wide for the 1998-99 school year.

(8) Any school district board of directors may petition the superintendent of public instruction by submission of a resolution adopted in a public meeting to reduce or delay any portion of its basic education allocation for any school year. The superintendent of public instruction shall approve such reduction or delay if it does not impair the district's financial condition. Any delay shall not be for more than two school years. Any reduction or delay shall have no impact on levy authority pursuant to RCW 84.52.0531 and local effort assistance pursuant to chapter 28A.500 RCW.

(9) The superintendent may distribute a maximum of ~~(\$10,598,000)~~ \$10,423,000 outside the basic education formula during fiscal years 2000 and 2001 as follows:

(a) For fire protection for school districts located in a fire protection district as now or hereafter established pursuant to chapter 52.04 RCW, a maximum of \$457,000 may be expended in fiscal year 2000 and a maximum of \$464,000 may be expended in fiscal year 2001;

(b) For summer vocational programs at skills centers, a maximum of \$2,098,000 may be expended each fiscal year;

(c) A maximum of \$585,000 may be expended for school district emergencies provided that up to \$260,000 shall be for the Toutle Lake school district emergency;

(d) A maximum of \$500,000 per fiscal year may be expended for programs providing skills training for secondary students who are enrolled in extended day school-to-work programs, as approved by the superintendent of public instruction. The funds shall be allocated at a rate not to exceed \$500 per full-time equivalent student enrolled in those programs; and

(e) A maximum of \$3,117,000 of the general fund—state appropriation for fiscal year 2000 and ~~((~~\$779,000~~)~~) \$604,000 of the general fund—state appropriation for fiscal year 2001 are provided for the 1999-00 school year for districts which experience an enrollment decline in the 1999-00 school year from the 1998-99 school year of more than 4.5 percent in full-time equivalent enrollment or more than 300 full-time equivalent students. The superintendent shall allocate funds to eligible school districts for up to one-half of the enrollment loss at the basic education unenhanced rate for the district. School districts receiving small school factor bonus funds shall not be eligible for enrollment decline funds to the extent that the district has no state apportionment loss as a result of the enrollment decline.

(10) For purposes of RCW 84.52.0531, the increase per full-time equivalent student in state basic education appropriations provided under chapter 309, Laws of 1999, including appropriations for salary and benefits increases, is 4.0 percent from the 1998-99 school to the 1999-00 school year, and 3.0 percent from the 1999-00 school year to the 2000-01 school year. This subsection supersedes section 1, chapter 10, Laws of 1999 sp. sess.

(11) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (h) of this section, the following shall apply:

(a) For three school years following consolidation, the number of basic education formula staff units shall not be less than the number of basic education formula staff units received by the districts in the school year prior to the consolidation; and

(b) For the fourth through eighth school years following consolidation, the difference between the basic education formula staff units received by the districts for the school year prior to consolidation and the basic education formula staff units after consolidation pursuant to subsection (2)(a) through (h) of this section shall be reduced in increments of twenty percent per year.

Sec. 503. 2000 2nd sp.s. c 1 s 504 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL EMPLOYEE COMPENSATION ADJUSTMENTS

General Fund—State Appropriation (FY 2000)	\$	186,314,000
General Fund—State Appropriation (FY 2001)	\$	((344,013,000))
		<u>345,596,000</u>
TOTAL APPROPRIATION	\$	((530,327,000))
		<u>531,910,000</u>

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

(1) ~~((~~\$406,511,000~~)~~) \$407,693,000 is provided for a cost of living adjustment of 3.0 percent effective September 1, 1999, and another 3.0 percent effective September 1, 2000, for state formula staff units. The appropriations include associated incremental fringe benefit allocations at rates of 15.85 percent for school

year 1999-00 and 14.98 percent for school year 2000-01 for certificated staff and 12.06 percent for school year 1999-00 and 12.32 percent for school year 2000-01 for classified staff. The appropriation also includes 1.67 percent effective September 1, 1999, for three learning improvement days pursuant to section 503(7) of this act and the salary allocation schedule adjustments for beginning and senior certificated instructional staff.

(a) The appropriations in this section include the increased portion of salaries and incremental fringe benefits for all relevant state-funded school programs in part V of this act. Salary adjustments for state employees in the office of superintendent of public instruction and the education reform program are provided in part VII of this act. Increases for general apportionment (basic education) are based on the salary allocation schedules and methodology in section 502 of this act. Increases for special education result from increases in each district's basic education allocation per student. Increases for educational service districts and institutional education programs are determined by the superintendent of public instruction using the methodology for general apportionment salaries and benefits in section 502 of this act.

(b) The appropriations in this section provide cost-of-living, learning improvement days for certificated instructional staff, and incremental fringe benefit allocations based on formula adjustments as follows:

(i) For pupil transportation, an increase of \$0.60 per weighted pupil-mile for the 1999-00 school year and \$1.23 per weighted pupil-mile for the 2000-01 school year;

(ii) For education of highly capable students, an increase of \$14.04 per formula student for the 1999-00 school year and \$21.09 per formula student for the 2000-01 school year; and

(iii) For transitional bilingual education, an increase of \$36.19 per eligible bilingual student for the 1999-00 school year and \$54.51 per eligible student for the 2000-01 school year; and

(iv) For learning assistance, an increase of \$13.97 per entitlement unit for the 1999-00 school year and \$23.04 per entitlement unit for the 2000-01 school year.

(c) The appropriations in this section include \$417,000 for fiscal year 2000 and ~~(\$1,214,000)~~ \$1,227,000 for fiscal year 2001 for salary increase adjustments for substitute teachers.

(2) ~~(\$123,816,000)~~ \$124,217,000 is provided for adjustments to insurance benefit allocations. The maintenance rate for insurance benefit allocations is \$335.75 per month for the 1999-00 and 2000-01 school years. The appropriations in this section provide for a rate increase to \$388.02 per month for the 1999-00 school year and \$425.89 per month for the 2000-01 school year at the following rates:

(a) For pupil transportation, an increase of \$0.48 per weighted pupil-mile for the 1999-00 school year and \$0.82 for the 2000-01 school year;

(b) For education of highly capable students, an increase of \$3.32 per formula student for the 1999-00 school year and \$5.72 for the 2000-01 school year;

(c) For transitional bilingual education, an increase of \$8.46 per eligible bilingual student for the 1999-00 school year and \$14.59 for the 2000-01 school year; and

(d) For learning assistance, an increase of \$6.65 per funded unit for the 1999-00 school year and \$11.47 for the 2000-01 school year.

(3) The rates specified in this section are subject to revision each year by the legislature.

Sec. 504. 2000 2nd sp.s. c 1 s 505 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PUPIL TRANSPORTATION

General Fund—State Appropriation (FY 2000)	\$	181,204,000
General Fund—State Appropriation (FY 2001)	\$	((181,061,000))
		<u>183,660,000</u>
TOTAL APPROPRIATION	\$	((362,265,000))
		<u>364,864,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) A maximum of \$1,473,000 may be expended for regional transportation coordinators and related activities. The transportation coordinators shall ensure that data submitted by school districts for state transportation funding shall, to the greatest extent practical, reflect the actual transportation activity of each district.

(3) \$10,000 of the fiscal year 2000 appropriation and \$10,000 of the fiscal year 2001 appropriation are provided solely for the transportation of students enrolled in "choice" programs. Transportation shall be limited to low-income students who are transferring to "choice" programs solely for educational reasons.

(4) Allocations for transportation of students shall be based on reimbursement rates of \$34.96 per weighted mile in the 1999-00 school year and \$35.17 per weighted mile in the 2000-01 school year exclusive of salary and benefit adjustments provided in section 504 of this act. Allocations for transportation of students transported more than one radius mile shall be based on weighted miles as determined by superintendent of public instruction multiplied by the per mile reimbursement rates for the school year pursuant to the formulas adopted by the superintendent of public instruction. Allocations for transportation of students living within one radius mile shall be based on the number of enrolled students in grades kindergarten through five living within one radius mile of their assigned school multiplied by the per mile reimbursement rate for the school year multiplied by 1.29.

Sec. 505. 2000 2nd sp.s. c 1 s 507 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SPECIAL EDUCATION PROGRAMS

General Fund—State Appropriation (FY 2000)	\$	387,011,000
General Fund—State Appropriation (FY 2001)	\$	((385,482,000))
		<u>391,076,000</u>
General Fund—Federal Appropriation	\$	((+171,667,000))
		<u>176,111,000</u>
TOTAL APPROPRIATION	\$	((944,160,000))
		<u>954,198,000</u>

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

(1) Funding for special education programs is provided on an excess cost basis, pursuant to RCW 28A.150.390. School districts shall ensure, to the greatest extent possible, that special education students receive their appropriate share of the general apportionment allocation accruing through sections 502 and 504 of this act. To the extent a school district cannot provide an appropriate education for special education students under chapter 28A.155 RCW through the general apportionment allocation, it shall provide services through the special education allocation funded in this section.

(2) Each general fund—state fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(3) The superintendent of public instruction shall distribute state funds to school districts based on two categories: The optional birth through age two program for special education eligible developmentally delayed infants and toddlers, and the mandatory special education program for special education eligible students ages three to twenty-one. A "special education eligible student" means a student receiving specially designed instruction in accordance with a properly formulated individualized education program.

(4) For the 1999-00 and 2000-01 school years, the superintendent shall distribute state funds to each district based on the sum of:

(a) A district's annual average headcount enrollment of developmentally delayed infants and toddlers ages birth through two, multiplied by the district's average basic education allocation per full-time equivalent student, multiplied by 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment multiplied by the funded enrollment percent determined pursuant to subsection (5)(c) of this section, multiplied by the district's average basic education allocation per full-time equivalent student multiplied by 0.9309.

(5) The definitions in this subsection apply throughout this section.

(a) "Average basic education allocation per full-time equivalent student" for a district shall be based on the staffing ratios required by RCW 28A.150.260 and shall not include enhancements, secondary vocational education, or small schools.

(b) "Annual average full-time equivalent basic education enrollment" means the resident enrollment including students enrolled through choice (RCW 28A.225.225) and students from nonhigh districts (RCW 28A.225.210) and excluding students residing in another district enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(c) "Enrollment percent" means the district's resident special education annual average enrollment including those students counted under the special education demonstration projects, excluding the birth through age two enrollment, as a percent of the district's annual average full-time equivalent basic education enrollment. For the 1999-00 and the 2000-01 school years, each district's funded enrollment percent shall be the lesser of the district's actual enrollment percent for the school year for which the allocation is being determined or 12.7 percent.

(6) At the request of any interdistrict cooperative of at least 15 districts in which all excess cost services for special education students of the districts are provided by the cooperative, the maximum enrollment percent shall be 12.7, and shall be calculated in the aggregate rather than individual district units. For purposes of this subsection, the average basic education allocation per full-time equivalent student shall be calculated in the aggregate rather than individual district units.

(7) A maximum of \$12,000,000 of the general fund—state appropriation for fiscal year 2000 and a maximum of \$12,000,000 of the general fund—state appropriation for fiscal year 2001 are provided as safety net funding for districts with demonstrated needs for state special education funding beyond the amounts provided in subsection (4) of this section. Safety net funding shall be awarded by the state safety net oversight committee.

(a) The safety net oversight committee shall first consider the needs of districts adversely affected by the 1995 change in the special education funding formula. Awards shall be based on the amount required to maintain the 1994-95 state special education excess cost allocation to the school district in aggregate or on a dollar per funded student basis.

(b) The committee shall then consider unusual needs of districts due to a special education population which differs significantly from the assumptions of the state funding formula. Awards shall be made to districts that convincingly demonstrate need due to the concentration and/or severity of disabilities in the district. Differences in program costs attributable to district philosophy or service delivery style are not a basis for safety net awards.

(c) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(d) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent in accordance with Substitute Senate Bill No. 5626 (medicaid payments to schools).

(e) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(f) The superintendent may expend up to \$100,000 per year of the amounts provided in this subsection to provide staff assistance to the committee in analyzing applications for safety net funds received by the committee.

(8) The superintendent of public instruction may adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. Prior to revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature.

(9) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) Staff of the office of superintendent of public instruction;

(b) Staff of the office of the state auditor;

(c) Staff of the office of the financial management; and

(d) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding.

(10) To the extent necessary, \$5,500,000 of the general fund—federal appropriation shall be expended for safety net funding to meet the extraordinary needs of one or more individual special education students. If safety net awards to meet the extraordinary needs of one or more individual special education students exceed \$5,500,000 of the general fund—federal appropriation, the superintendent shall expend all available federal discretionary funds necessary to meet this need. General fund—state funds shall not be expended for this purpose.

(11) A maximum of \$678,000 may be expended from the general fund—state appropriations to fund 5.43 full-time equivalent teachers and 2.1 full-time equivalent aides at children's orthopedic hospital and medical center. This amount is in lieu of money provided through the home and hospital allocation and the special education program.

(12) A maximum of \$1,000,000 of the general fund—federal appropriation is provided for projects to provide special education students with appropriate job and independent living skills, including work experience where possible, to facilitate their successful transition out of the public school system. The funds provided by this subsection shall be from federal discretionary grants.

(13) A school district may carry over from one year to the next year up to 10 percent of general fund—state funds allocated under this program; however, carry over funds shall be expended in the special education program.

(14) The superintendent shall maintain the percentage of federal flow-through to school districts at 85 percent. In addition to other purposes, school districts may use increased federal funds for high-cost students, for purchasing regional special

education services from educational service districts, and for staff development activities particularly relating to inclusion issues.

(15) A maximum of \$1,200,000 of the general fund—federal appropriation may be expended by the superintendent for projects related to use of inclusion strategies by school districts for provision of special education services. The superintendent shall prepare an information database on laws, best practices, examples of programs, and recommended resources. The information may be disseminated in a variety of ways, including workshops and other staff development activities.

Sec. 506. 2000 2nd sp.s. c 1 s 508 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR TRAFFIC SAFETY EDUCATION PROGRAMS

General Fund—State Appropriation (FY 2000)	\$	7,738,000
General Fund—State Appropriation (FY 2001)	\$	((7,771,000))
		<u>7,276,000</u>
TOTAL APPROPRIATION	\$	((15,509,000))
		<u>15,014,000</u>

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

- (1) The appropriations include such funds as are necessary to complete the school year ending in each fiscal year and for prior fiscal year adjustments.
- (2) A maximum of \$507,000 may be expended for regional traffic safety education coordinators.
- (3) The maximum basic state allocation per student completing the program shall be \$137.16 in the 1999-00 and 2000-01 school years.
- (4) Additional allocations to provide tuition assistance for students from low-income families who complete the program shall be a maximum of \$66.81 per eligible student in the 1999-00 and 2000-01 school years.

Sec. 507. 2000 2nd sp.s. c 1 s 510 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR LOCAL EFFORT ASSISTANCE

General Fund—State Appropriation (FY 2000)	\$	102,563,000
General Fund—State Appropriation (FY 2001)	\$	((122,114,000))
		<u>124,107,000</u>
TOTAL APPROPRIATION	\$	((224,677,000))
		<u>226,670,000</u>

Sec. 508. 2000 2nd sp.s. c 1 s 511 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR INSTITUTIONAL EDUCATION PROGRAMS

General Fund—State Appropriation (FY 2000)	\$	19,296,000
General Fund—State Appropriation (FY 2001)	\$	((19,469,000))
		<u>18,249,000</u>

General Fund—Federal Appropriation	\$	8,548,000
TOTAL APPROPRIATION	\$	((47,313,000))
		<u>46,093,000</u>

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

(1) Each general fund—state fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) State funding provided under this section is based on salaries and other expenditures for a 220-day school year. The superintendent of public instruction shall monitor school district expenditure plans for institutional education programs to ensure that districts plan for a full-time summer program.

(3) State funding for each institutional education program shall be based on the institution's annual average full-time equivalent student enrollment. Staffing ratios for each category of institution shall remain the same as those funded in the 1995-97 biennium.

(4) The funded staffing ratios for education programs for juveniles age 18 or less in department of corrections facilities shall be the same as those provided in the 1997-99 biennium.

(5) \$92,000 of the general fund—state appropriation for fiscal year 2000 and ((~~\$143,000~~)) \$139,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to maintain at least one certificated instructional staff and related support services at an institution whenever the K-12 enrollment is not sufficient to support one full-time equivalent certificated instructional staff to furnish the educational program. The following types of institutions are included: Residential programs under the department of social and health services for developmentally disabled juveniles, programs for juveniles under the department of corrections, and programs for juveniles under the juvenile rehabilitation administration.

(6) Ten percent of the funds allocated for each institution may be carried over from one year to the next.

Sec. 509. 2000 2nd sp.s. c 1 s 512 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PROGRAMS FOR HIGHLY CAPABLE STUDENTS

General Fund—State Appropriation (FY 2000)	\$	6,164,000
General Fund—State Appropriation (FY 2001)	\$	((6,105,000))
		<u>6,090,000</u>
TOTAL APPROPRIATION	\$	((12,269,000))
		<u>12,254,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for school district programs for highly capable students shall be distributed at a maximum rate of \$312.19 per funded student for the 1999-00 school year and (~~(\$310.43)~~) \$310.40 per funded student for the 2000-01 school year, exclusive of salary and benefit adjustments pursuant to section 504 of this act. The number of funded students shall be a maximum of two percent of each district's full-time equivalent basic education enrollment.

(3) \$350,000 of the appropriation is for the centrum program at Fort Worden state park.

(4) \$186,000 of the appropriation is for the Washington imagination network and future problem-solving programs.

**Sec. 510. 2000 2nd sp.s. c 1 s 514 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—
EDUCATION REFORM PROGRAMS**

General Fund—State Appropriation (FY 2000)	\$	33,234,000
General Fund—State Appropriation (FY 2001)	\$	((36,300,000))
		<u>35,413,000</u>
TOTAL APPROPRIATION	\$	((69,534,000)) <u>68,647,000</u>

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

(1) \$268,000 of the general fund—state appropriation for fiscal year 2000 and \$322,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the commission established under PART I of Substitute Senate Bill No. 5418 or Second Substitute House Bill No. 1462. If neither bill is enacted by June 30, 1999, the amount provided in this subsection shall be used for implementation of education reform and an accountability system by the office of the superintendent of public instruction.

(2) \$9,307,000 of the general fund—state appropriation for fiscal year 2000 and (~~(\$11,329,000)~~) \$10,442,000 of the general fund—state appropriation for fiscal year 2001 are provided for development and implementation of the Washington assessments of student learning. Up to \$689,000 of the appropriation may be expended for data analysis and data management of test results.

(3) \$2,190,000 is provided solely for training of paraprofessional classroom assistants and certificated staff who work with classroom assistants as provided in RCW 28A.415.310.

(4) \$6,818,000 is provided for mentor teacher assistance, including state support activities, under RCW 28A.415.250 and 28A.415.260. Funds for the teacher assistance program shall be allocated to school districts based on the number of beginning teachers. The 1999 teacher preparation and development report from the Washington institute for public policy found that (a) there are no

state-wide standards for what teacher assistance programs are intended to accomplish and (b) the program has not been changed to reflect increased expectations for improved student learning under education reform. By November 15, 2001, the office of the superintendent of public instruction shall submit a report to the education and fiscal committees of the house of representatives and the senate documenting the outcomes of program changes implemented in response to the study.

(5) \$4,050,000 is provided for improving technology infrastructure, monitoring and reporting on school district technology development, promoting standards for school district technology, promoting statewide coordination and planning for technology development, and providing regional educational technology support centers, including state support activities, under chapter 28A.650 RCW.

(6) \$7,200,000 is provided for grants to school districts to provide a continuum of care for children and families to help children become ready to learn. Grant proposals from school districts shall contain local plans designed collaboratively with community service providers. If a continuum of care program exists in the area in which the school district is located, the local plan shall provide for coordination with existing programs to the greatest extent possible. Grant funds shall be allocated pursuant to RCW 70.190.040.

(7) \$5,000,000 is provided solely for the meals for kids program under RCW 28A.235.145 through 28A.235.155.

(8) \$1,260,000 is provided for technical assistance related to education reform through the office of the superintendent of public instruction, in consultation with the commission on student learning or its successor, as specified in RCW 28A.300.130 (center for the improvement of student learning).

(9) \$2,208,000 is provided solely for the leadership internship program for superintendents, principals, and program administrators.

(10) \$1,000,000 of the general fund—state appropriation for fiscal year 2000 and \$1,000,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to establish a mathematics helping corps subject to the following conditions and limitations:

(a) In order to increase the availability and quality of technical mathematics assistance state-wide, the superintendent of public instruction, shall employ regional school improvement coordinators and mathematics school improvement specialists to provide assistance to schools and districts. The regional coordinators and specialists shall be hired by and work under the direction of a state-wide school improvement coordinator. The mathematics improvement specialists shall serve on a rotating basis from one to three years and shall not be permanent employees of the superintendent of public instruction.

(b) The school improvement coordinators and specialists shall provide the following:

(i) Assistance to schools to disaggregate student performance data and develop improvement plans based on those data;

(ii) Consultation with schools and districts concerning their performance on the Washington assessment of student learning and other assessments emphasizing the performance on the mathematics assessments;

(iii) Consultation concerning curricula that aligns with the essential academic learning requirements emphasizing the academic learning requirements for mathematics, the Washington assessment of student learning, and meets the needs of diverse learners;

(iv) Assistance in the identification and implementation of research-based instructional practices in mathematics;

(v) Staff training that emphasizes effective instructional strategies and classroom-based assessment for mathematics;

(vi) Assistance in developing and implementing family and community involvement programs emphasizing mathematics; and

(vii) Other assistance to schools and school districts intended to improve student mathematics learning.

(11) A maximum of \$1,000,000 of the general fund—state appropriation is provided to expand the number of summer accountability institutes offered by the superintendent of public instruction and the commission on student learning or its successor. The institutes shall provide school district staff with training in the analysis of student assessment data, information regarding successful district and school teaching models, research on curriculum and instruction, and planning tools for districts to improve instruction in reading, mathematics, language arts, and guidance and counseling but placing an emphasis on mathematics.

(12) \$8,000,000 of the general fund—state appropriation for fiscal year 2000 and \$8,000,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the Washington reading corps subject to the following conditions and limitations:

(a) Grants shall be allocated to schools and school districts to implement proven, research-based mentoring and tutoring programs in reading for low-performing students in grades K-6. If the grant is made to a school district, the principals of schools enrolling targeted students shall be consulted concerning design and implementation of the program.

(b) The programs may be implemented before, after, or during the regular school day, or on Saturdays, summer, intercessions, or other vacation periods.

(c) Two or more schools may combine their Washington reading corps programs.

(d) A program is eligible for a grant if it meets one of the following conditions:

(i) The program is recommended either by the education commission of the states or the Northwest regional educational laboratory; or

(ii) The program is developed by schools or school districts and is approved by the office of the superintendent of public instruction based on the following criteria:

(A) The program employs methods of teaching and student learning based on reliable reading/literacy research and effective practices;

(B) The program design is comprehensive and includes instruction, on-going student assessment, professional development, parental/community involvement, and program management aligned with the school's reading curriculum;

(C) It provides quality professional development and training for teachers, staff, and volunteer mentors and tutors;

(D) It has measurable goals for student reading aligned with the essential academic learning requirements; and

(E) It contains an evaluation component to determine the effectiveness of the program.

(e) Funding priority shall be given to low-performing schools.

(f) Beginning, interim, and end-of-program testing data shall be available to determine the effectiveness of funded programs and practices. Common evaluative criteria across programs, such as grade-level improvements shall be available for each reading corps program. The superintendent of public instruction shall provide program evaluations to the governor and the appropriate committees of the legislature. Administrative and evaluation costs may be assessed from the annual appropriation for the program.

(g) Grants provided under this section may be used by schools and school districts for expenditures from July 1, 1999, through August 31, 2001.

(13) \$120,000 of the general fund—state appropriation for fiscal year 2000 and \$272,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for salary bonuses for teachers who attain certification by the national board for professional teaching standards.

(a) During the 1999-00 school year, teachers who have attained certification by the national board will receive a one-time 15 percent salary bonus. The bonus is provided in recognition of their outstanding performance. The bonuses shall be provided subject to the following conditions and limitations:

(i) For teachers achieving certification prior to September 1, 1999, the bonus shall begin on September 1, 1999.

(ii) Teachers enrolled in the program prior to September 1, 1999, achieving certification during the 1999-2000 school year shall be eligible for the bonus for the number of months during the school year that the individual has achieved certification.

(b) During the 2000-01 school year, teachers who have attained certification by the national board during the 2000-01 school year or in prior school years will receive an annual bonus of \$3,500. The annual bonus will be paid in a lump sum amount. The annual bonus provided under this subsection shall not be included in the definition of "earnable compensation" under RCW 41.32.010(10).

(c) It is the intent of the legislature that teachers achieving certification by the national board of professional teaching standards will receive no more than two bonus payments under this subsection.

(14) \$125,000 of the general fund—state appropriation for fiscal year 2001 is provided for a principal support program. The office of the superintendent of public instruction may contract with an independent organization to administer the program. The program shall include: (a) Development of an individualized professional growth plan for a new principal or principal candidate; and (b) participation of a mentor principal who works over a period of between one and three years with the new principal or principal candidate to help him or her build the skills identified as critical to the success of the professional growth plan.

(15) \$35,000 of the general fund—state appropriation for fiscal year 2000 and \$71,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the second grade reading test. The funds shall be expended for assessment training for new second grade teachers and replacement of assessment materials.

Sec. 511. 2000 2nd sp.s. c 1 s 515 (uncodified) is amended to read as follows:
**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR
 TRANSITIONAL BILINGUAL PROGRAMS**

General Fund—State Appropriation (FY 2000)	\$	35,876,000
General Fund—State Appropriation (FY 2001)	\$	((37,605,000))
		<u>37,776,000</u>
TOTAL APPROPRIATION	\$	((73,481,000))
		<u>73,652,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) The superintendent shall distribute a maximum of \$646.06 per eligible bilingual student in the 1999-00 school year and \$641.64 in the 2000-01 school year, exclusive of salary and benefit adjustments provided in section ~~((503 of this act))~~ 504, chapter 1, Laws of 2000 2nd sp. sess.

Sec. 512. 2000 2nd sp.s. c 1 s 516 (uncodified) is amended to read as follows:
**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR THE
 LEARNING ASSISTANCE PROGRAM**

General Fund—State Appropriation (FY 2000)	\$	68,936,000
General Fund—State Appropriation (FY 2001)	\$	((69,470,000))
		<u>68,392,000</u>
TOTAL APPROPRIATION	\$	((138,406,000))
		<u>137,328,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Funding for school district learning assistance programs shall be allocated at maximum rates of \$382.08 per funded unit for the 1999-00 school year and \$381.90 per funded unit for the 2000-01 school year.

(3) A school district's funded units for the 1999-2000 and 2000-01 school years shall be the sum of the following:

(a) The district's full-time equivalent enrollment in grades K-6, multiplied by the 5-year average 4th grade lowest quartile test results as adjusted for funding purposes in the school years prior to 1999-2000, multiplied by 0.92. As the 3rd grade test becomes available, it shall be phased into the 5-year average on a 1-year lag; and

(b) The district's full-time equivalent enrollment in grades 7-9, multiplied by the 5-year average 8th grade lowest quartile test results as adjusted for funding purposes in the school years prior to 1999-2000, multiplied by 0.92. As the 6th grade test becomes available, it shall be phased into the 5-year average for these grades on a 1-year lag; and

(c) The district's full-time equivalent enrollment in grades 10-11 multiplied by the 5-year average 11th grade lowest quartile test results, multiplied by 0.92. As the 9th grade test becomes available, it shall be phased into the 5-year average for these grades on a 1-year lag; and

(d) If, in the prior school year, the district's percentage of October headcount enrollment in grades K-12 eligible for free and reduced price lunch exceeded the state average, subtract the state average percentage of students eligible for free and reduced price lunch from the district's percentage and multiply the result by the district's K-12 annual average full-time equivalent enrollment for the current school year multiplied by 22.3 percent.

(4) School districts may carry over from one year to the next up to 10 percent of funds allocated under this program; however, carryover funds shall be expended for the learning assistance program.

**Sec. 513. 2000 2nd sp.s. c 1 s 517 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—LOCAL
ENHANCEMENT FUNDS**

General Fund—State Appropriation (FY 2000)	\$	32,981,000
General Fund—State Appropriation (FY 2001)	\$	((27,315,000))
		<u>27,389,000</u>
TOTAL APPROPRIATION	\$	((60,296,000))
		<u>60,370,000</u>

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

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Funds are provided for local education program enhancements to meet educational needs as identified by the school district, including alternative education programs.

(3) Allocations for the 1999-00 school year shall be at a maximum annual rate of \$28.81 per full-time equivalent student and \$28.81 per full-time equivalent student for the 2000-01 school year. Allocations shall be made on the monthly apportionment payment schedule provided in RCW 28A.510.250 and shall be based on school district annual average full-time equivalent enrollment in grades kindergarten through twelve: PROVIDED, That for school districts enrolling not more than one hundred average annual full-time equivalent students, and for small school plants within any school district designated as remote and necessary schools, the allocations shall be as follows:

(a) Enrollment of not more than sixty average annual full-time equivalent students in grades kindergarten through six shall generate funding based on sixty full-time equivalent students;

(b) Enrollment of not more than twenty average annual full-time equivalent students in grades seven and eight shall generate funding based on twenty full-time equivalent students; and

(c) Enrollment of not more than sixty average annual full-time equivalent students in grades nine through twelve shall generate funding based on sixty full-time equivalent students.

(4) Funding provided pursuant to this section does not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state's funding duty thereunder.

(5) The superintendent shall not allocate up to one-fourth of a district's funds under this section if:

(a) The district is not maximizing federal matching funds for medical services provided through special education programs, pursuant to RCW 74.09.5241 through 74.09.5256 (Title XIX funding); or

(b) The district is not in compliance in filing truancy petitions as required under chapter 312, Laws of 1995 and RCW 28A.225.030.

Sec. 514. 2000 2nd sp.s. c 1 s 518 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—BETTER SCHOOLS PROGRAM

General Fund—State Appropriation (FY 2001) \$ ~~((57,500,000))~~
56,096,000

Better schools program funds are appropriated to provide additional school improvement resources to help students meet the essential academic learning requirements and student assessment performance standards. ~~((It is the intent of the legislature that these funds will be appropriated on an ongoing basis in future~~

bienia:)) Allocations received under this section shall be used for the following new and expanded educational enhancements as follows:

(1) (~~(\$37,389,000)~~) \$35,985,000 of the appropriation shall be allocated for class size reduction and expanded learning opportunities as follows:

(a) For the 2000-01 school year, an additional 2.2 certificated instructional staff units for grades K-4 per thousand full-time equivalent students are provided to supplement the certificated staffing allocations under section 502 (2)(a) of this act. Funds allocated for these additional certificated units shall not be considered as basic education funding. The allocation may be used (i) for reducing class sizes in grades K-4 or (ii) to provide additional classroom contact hours for kindergarten, before-and-after-school programs, weekend school programs, summer school programs, and intercession opportunities to assist elementary school students in meeting the essential academic learning requirements and student assessment performance standards. For purposes of this subsection, additional classroom contact hours provided by teachers beyond the normal school day under a supplemental contract shall be converted to a certificated full-time equivalent by dividing the classroom contact hours by 900.

(b) Any district maintaining a ratio equal to or greater than 55.4 certificated instructional staff per thousand full-time equivalent students in grades K-4 may use allocations generated under this subsection to employ additional certificated instructional staff or classified instructional assistants in grades K-12 or to provide additional classroom opportunities under (a) of this subsection in grades K-12.

(c) Salary calculations, nonemployee related costs, and substitute teacher allocations shall be calculated in the same manner as provided under section 502 of this act. The allocation includes salary and benefit increases equivalent to those provided under section 503 of this act.

(2) \$20,111,000 of the appropriation shall be allocated for professional development and training as follows:

(a) For fiscal year 2001, the funds shall be used for additional professional development for certificated and classified staff, including additional paid time for curriculum and lesson redesign and development work and training to ensure that instruction is aligned with state standards and student needs.

(b) For fiscal year 2001, the superintendent shall allocate the funds to school districts at a rate of \$20.04 per student based on the October 1999 P-105 unduplicated headcount.

(c) School districts shall allocate the funds to schools and the expenditure of the funds shall be determined by the staff at each school site.

Sec. 515. 2000 2nd sp.s. c 1 s 519 (uncodified) is amended to read as follows:
FOR THE STATE BOARD OF EDUCATION

Education Savings Account—State Appropriation	\$	((78,612,000))
		<u>28,077,000</u>
Education Construction Account—State		
Appropriation	\$	35,000,000

TOTAL APPROPRIATION	\$	((113,612,000))
		<u>63,077,000</u>

The appropriation in this section is subject to the following conditions and limitations:

(1) ~~(\$42,612,000 in fiscal year 2000 and \$36,000,000 in fiscal year 2001 are)~~ \$28,077,000 of the education savings account is appropriated to the common school construction account.

(2) The education construction account appropriation shall be deposited in the common school construction account.

**PART VI
HIGHER EDUCATION**

Sec. 601. 2000 2nd sp.s. c 1 s 602 (uncodified) is amended to read as follows:
FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

General Fund—State Appropriation (FY 2000)	\$	456,291,000
General Fund—State Appropriation (FY 2001)	\$	((489,677,000))
		<u>490,377,000</u>
General Fund—Federal Appropriation	\$	11,404,000
Education Construction Account—State		
Appropriation	\$	1,000,000
Employment and Training Trust Account—		
State Appropriation	\$	888,000
TOTAL APPROPRIATION	\$	((959,260,000))
		<u>959,960,000</u>

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

(1) The technical colleges may increase tuition and fees in excess of the fiscal growth factor to conform with the percentage increase in community college operating fees.

(2)(a) \$5,000,000 of the general fund—state appropriation for fiscal year 2000 and \$5,000,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to increase salaries and related benefits for part-time faculty. The state board for community and technical colleges shall allocate these funds to college districts based on the headcount of part-time faculty under contract for the 1998-99 academic year. To earn these funds, a college district must match the state funds with local revenue, the amounts for which shall be determined by the state board. State fund allocations that go unclaimed by a college district shall lapse. The board may provide salary increases to part-time faculty in a total amount not to exceed \$10,000,000 from tuition revenues. The board shall report to the office of financial management and legislative fiscal committees on the distribution of

state funds, match requirements of each district, and the wage adjustments for part-time faculty by October 1 of each fiscal year.

(b) Each college district shall examine its current ratio of part-time to full-time faculty by discipline and report to the board a plan to reduce wage disparity and reliance on part-time faculty through salary improvements, conversion of positions to full-time status, and other remedies deemed appropriate given labor market conditions and educational programs offered in each community. The board shall set long-term performance targets for each district with respect to use of part-time faculty and monitor progress annually. The board shall report to the fiscal and higher education committees of the legislature on implementation of this subsection by no later than December 1, 1999, with recommendations for the ensuing biennium provided no later than December 1, 2000.

(3) \$1,155,000 of the general fund—state appropriation for fiscal year 2000 and \$2,345,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for faculty salary increments and associated benefits and may be used in combination with salary and benefit savings from faculty turnover to provide faculty salary increments and associated benefits. To the extent general salary increase funding is used to pay faculty increments, the general salary increase shall be reduced by the same amount.

(4) \$950,000 of the general fund—state appropriation for fiscal year 2000 and \$950,000 of the general fund—state appropriation for fiscal year 2001 are provided solely to lower the part-time faculty retirement eligibility threshold to fifty percent of the full-time workload.

(5) \$332,000 of the general fund—state appropriation for fiscal year 2000 and \$3,153,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for Cascadia Community College start-up and enrollment costs.

(6) \$1,441,000 of the general fund—state appropriation for fiscal year 2000 and \$1,441,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for 500 FTE enrollment slots to implement RCW 28B.50.259 (timber-dependent communities).

(7) \$27,775,000 of the general fund—state appropriation for fiscal year 2000, \$28,761,000 of the general fund—state appropriation for fiscal year 2001, and the entire employment and training trust account appropriation are provided solely as special funds for training and related support services, including financial aid, child care, and transportation, as specified in chapter 226, Laws of 1993 (employment and training for unemployed workers).

(a) Funding is provided to support up to 7,200 full-time equivalent students in each fiscal year.

(b) The state board for community and technical colleges shall submit a plan for allocation of the full-time equivalent students provided in this subsection to the workforce training and education coordinating board for review and approval.

(8) \$1,000,000 of the general fund—state appropriation for fiscal year 2000 and \$1,000,000 of the general fund—state appropriation for fiscal year 2001 are

provided solely for tuition support for students enrolled in work-based learning programs.

(9) \$567,000 of the general fund—state appropriation for fiscal year 2000 and \$568,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for administration and customized training contracts through the job skills program.

(10) \$750,000 of the general fund—state appropriation for fiscal year 2000 and \$750,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for grants to expand information technology and computer science programs. Successful grant applications from a college, partnerships of colleges, or partnerships of colleges and K-12 school districts must include a match of cash, in-kind, or donations equivalent to the grant amount. Grant applications shall receive priority that prepare students to meet industry standards, achieve industry skill certificates, or continue to upper division computer science or computer engineering studies. No college may receive more than \$300,000 from appropriations in this section. The state board for community and technical colleges shall report the implementation of this section to the governor and legislative fiscal committees by June 30, 2001, including plans of successful grant recipients for the continuation of programs funded by this section.

(11) \$1,000,000 of the general fund—state appropriation for fiscal year 2000 and \$1,000,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for the Pierce College branch at Puyallup.

(12) \$50,000 of the general fund—state appropriation for fiscal year 2000 and \$50,000 of the general fund—state appropriation for fiscal year 2001 are solely for implementation of Substitute Senate Bill No. 5277 (higher education student child care matching grants). In no case shall funds provided in this subsection be used to construct or remodel facilities. If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(13) Funding in this section provides for the collection and reporting of Washington enrollment data, and related activities, for the distance learning information project described in section 129 of this act.

(14) \$425,000 of the general fund—state appropriation is provided solely for allocation to Olympic college. Olympic college shall contract with accredited baccalaureate institution(s) to bring a program of upper-division courses, concentrating on but not limited to business, education, and human relations, to Bremerton. Moneys may be used by Olympic college during either fiscal year to equip and support a state-owned or state-leased facility in Bremerton where contracted courses are delivered.

(15) \$1,000,000 of the education construction account—state appropriation for fiscal year 2001 is provided to replace failing roofs at Columbia basin college.

(16) \$500,000 of the general fund—state appropriation for fiscal year 2001 is provided for assistance to students with disabilities.

(17) \$750,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for a student centered online delivery system to broaden access and increase use of college catalogs, schedules, and registration systems.

(18) \$658,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for maintenance and operations of Cascadia college phase 2, and for facilities previously authorized for construction with certificates of participation:

- (a) Workforce training facility at Columbia basin college;
- (b) Student services auditorium at Columbia basin college;
- (c) Music building at Edmonds community college;
- (d) Student center at South Puget Sound community college;
- (e) Addition to the Lair student center at Spokane community college;
- (f) Addition to the student union building at Yakima Valley community college; and
- (g) Classroom and child care facility at Whatcom community college.

(19) \$700,000 of the general fund—state appropriation for fiscal year 2001 is provided solely for lawsuit settlement costs at Green River community college.

Sec. 602. 2000 2nd sp.s. c 1 s 606 (uncodified) is amended to read as follows:

FOR CENTRAL WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2000)	\$	42,060,000
General Fund—State Appropriation (FY 2001)	\$	44,726,000
TOTAL APPROPRIATION	\$	86,786,000

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

(1) \$312,000 of the general fund—state appropriation for fiscal year 2000 and \$312,000 of the general fund—state appropriation for fiscal year 2001 are provided solely for competitively offered recruitment, retention, and equity salary adjustments for instructional and research faculty, exempt professional staff, academic administrators, academic librarians, counselors, teaching and research assistants, as classified by the office of financial management, and all other nonclassified staff, but not including employees under RCW 28B.16.015. Tuition revenues may be expended in addition to those required by this section to further provide recruitment and retention salary adjustments. The university shall provide a report in their 2001-03 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this section.

(2) The office of financial management shall hold and release funds to the university at the rate of \$4,756 per enrolled state FTE student in excess of fiscal year 2000 actual annualized enrollment as determined in the budget driver tracking report prepared by the office of financial management. Of the amounts held pursuant to this subsection, \$300,000 shall be released to the university for the sole purpose of implementing enrollment improvement initiatives, and any remaining moneys not earned by the university for enrolling additional state students during

the 2000-2001 academic year shall lapse to the education savings account at the close of the biennium.

**PART VII
SPECIAL APPROPRIATIONS**

**See. 701. 2000 2nd sp.s. c 1 s 701 (uncodified) is amended to read as follows:
FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
FOR DEBT SUBJECT TO THE DEBT LIMIT**

General Fund—State Appropriation (FY 2000)	\$	634,792,000
General Fund—State Appropriation (FY 2001)	\$	((435,288,000))
		<u>436,354,000</u>
State Building Construction Account—State		
Appropriation	\$	6,797,000
Debt-Limit Reimbursable Bond Retirement Account—		
State Appropriation	\$	2,565,000
TOTAL APPROPRIATION	\$	((1,079,442,000))
		<u>1,080,508,000</u>

The appropriations in this section are subject to the following conditions and limitations: The general fund appropriations are for deposit into the debt-limit general fund bond retirement account. The appropriation for fiscal year 2000 shall be deposited in the debt-limit general fund bond retirement account by June 30, 2000.

**See. 702. 2000 2nd sp.s. c 1 s 703 (uncodified) is amended to read as follows:
FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
FOR GENERAL OBLIGATION DEBT TO BE REIMBURSED AS
PRESCRIBED BY STATUTE**

General Fund—State Appropriation (FY 2000)	\$	23,678,000
General Fund—State Appropriation (FY 2001)	\$	23,283,000
Higher Education Construction Account—State		
Appropriation	\$	((695,000))
		<u>545,000</u>
<u>State Higher Education Construction Account—</u>		
<u>State Appropriation</u>	<u>\$</u>	<u>150,000</u>
Nondebt-Limit Reimbursable Bond Retirement		
Account—State Appropriation	\$	((19,977,000))
		<u>117,077,000</u>
Stadium and Exhibition Center Construction—State		
Appropriation	\$	1,970,000
TOTAL APPROPRIATION	\$	((169,603,000))
		<u>166,703,000</u>

The appropriations in this section are subject to the following conditions and limitations: The general fund appropriation is for deposit into the nondebt-limit general fund bond retirement account.

Sec. 703. 2000 2nd sp.s. c 1 s 704 (uncodified) is amended to read as follows:
**FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
 AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
 FOR BOND SALE EXPENSES**

General Fund—State Appropriation (FY 2000)	\$	567,000
General Fund—State Appropriation (FY 2001)	\$	568,000
Higher Education Construction Account—State Appropriation	\$	((83,000)) <u>63,000</u>
State Building Construction Account—State Appropriation	\$	1,237,000
<u>State Higher Education Construction Account— State Appropriation</u>	\$	<u>20,000</u>
Public Safety Reimbursable Bond Account—State Appropriation	\$	0
Stadium/Exhibition Center Construction Account—State Appropriation	\$	250,000
TOTAL APPROPRIATION	\$	2,705,000

Total Bond Retirement and Interest Appropriations
 contained in sections 701 through 704
 of this act and section 704, chapter 309,
 Laws of 1999

	\$	((1,295,863,000)) <u>1,292,963,000</u>
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Sec. 704. 1999 c 309 s 708 (uncodified) is amended to read as follows:
**FOR THE OFFICE OF FINANCIAL MANAGEMENT—FIRE
 CONTINGENCY POOL**

<u>General Fund—State Appropriation (FY 2001)</u>	<u>\$</u>	<u>1,000,000</u>
<u>Disaster Response Account—State Appropriation</u>	<u>\$</u>	<u>4,000,000</u>

~~((The sum of three million dollars or so much thereof as may be available on June 30, 1999, from the total amount of unspent fiscal year 1999 fire contingency funding in))~~ The appropriations in this section are subject to the following conditions and limitations: The general fund—state appropriation is provided solely for deposit into the disaster response account. The disaster response account((,-is appropriated)) appropriation is provided for the purpose of making allocations to the military department for fire mobilizations costs or to the department of natural resources for fire suppression costs.

NEW SECTION. Sec. 705. A new section is added to 1999 c 309 (uncodified) to read as follows:

FOR SUNDRY CLAIMS. The following sums, or so much thereof as may be necessary, are appropriated from the general fund, unless otherwise indicated, for relief of various individuals, firms, and corporations for sundry claims. These appropriations are to be disbursed on vouchers approved by the director of general administration, except as otherwise provided, as follows:

(1) Reimbursement of criminal defendants acquitted on the basis of self-defense, pursuant to RCW 9A.16.110:

(a) Gregory Sykes, claim number SCJ 2001-01	\$ 6,647
(b) Daniel Anker, claim number SCJ 2001-02	\$ 17,584
(c) Joshua Swaney, claim number SCJ 2001-03	\$ 32,000
(d) Yanis Nadzins, claim number SCJ 2001-04	\$ 5,000
(e) Shawn Kostelec, claim number SCJ 2001-05	\$ 2,800
(f) Terry Hanson, claim number SCJ 2001-07	\$ 6,742
(g) Allen West, claim number SCJ 2001-08	\$ 9,001
(h) Kim McLemore, claim number SCJ 2001-09	\$ 920
(i) Norma Vasquez, claim number SCJ 2001-11	\$ 1,110
(j) Clifford Stewart, claim number SCJ 2001-12	\$ 2,948
(k) Lee Sumerlin, claim number SCJ 2001-14	\$ 135
(l) Maxwell Jones, claim number SCJ 2001-16	\$ 6,840

(2) Payment from the state wildlife account for damage to crops by wildlife, pursuant to RCW 77.36.050:

(a) Carl Anderson, claim number SCG 2001-02	\$ 30,357
(b) Marshall Anderson, claim number SCG 2001-03	\$ 20,439
(c) Richard Anderson, claim number SCG 2001-04	\$ 34,196
(d) Bud Hamilton, claim number SCG 2001-05	\$ 97,761
(e) Ice Brothers, claim number SCG 2001-06	\$ 23,922
(f) Dick Rubenser, claim number SCG 2001-07	\$ 14,100

NEW SECTION. Sec. 706. A new section is added to 1999 c 309 (uncodified) to read as follows:

Any program costs or money in this act that is shifted to the general fund from another fund or account requires an adjustment to the state expenditure limit under RCW 43.135.035(5).

NEW SECTION. Sec. 707. A new section is added to 1999 c 309 (uncodified) to read as follows:

FOR WASHINGTON STATE UNIVERSITY—AGRICULTURAL COLLEGE TRUST LANDS. The sum of sixteen million dollars is appropriated from the education construction account to the agricultural permanent account as full and final payment of the agricultural college trust land settlement effective May 24, 1999, between the office of financial management and Washington State University, and shall be used to support financing of the health sciences building in Spokane.

Sec. 708. 2000 2nd sp.s. c 1 s 730 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT—COUNTY PUBLIC HEALTH ASSISTANCE

The sum of \$33,183,801 is appropriated from the health services account to the department of community, trade, and economic development for distribution for the purposes of public health. Of the amounts provided, \$11,061,266 is to be distributed for ~~((calendar))~~ fiscal year 2000 for the period from ~~((July))~~ January 1 through ~~((December 31))~~ June 30, and \$22,122,535 is to be distributed for ~~((calendar))~~ fiscal year 2001, to the following counties and health districts in the amounts designated:

County or Health District	FY 2000	FY 2001	1999-2001 Biennium
Adams County Health District	15,165	30,330	45,495
Anotin County Health District	30,008	60,015	90,023
Benton-Franklin Health District	551,371	1,102,742	1,654,113
Chelan-Douglas Health District	79,726	159,451	239,177
Cllallam County Health and Human Services Department	68,512	137,024	205,536
Southwest Washington Health District	512,816	1,025,631	1,538,447
Columbia County Health District	19,857	39,715	59,572
Cowlitz County Health Department	129,921	259,842	389,763
Garfield County Health District	7,363	14,726	22,089
Grant County Health District	48,355	96,710	145,065
Grays Harbor Health Department	90,088	180,176	270,264
Island County Health Department	37,465	74,930	112,395
Jefferson County Health and Human Services	38,072	76,145	114,217
Seattle-King County Department of Public Health	4,153,122	8,306,245	12,459,367
Bremerton-Kitsap County Health District	271,037	542,074	813,111
Kittitas County Health Department	38,712	77,425	116,137
Klickitat County Health Department	24,002	48,004	72,006
Lewis County Health Department	49,704	99,409	149,113
Lincoln County Health Department	10,306	20,613	30,919
Mason County Department of Health Services	40,946	81,893	122,839
Okanogan County Health District	30,549	61,099	91,648
Pacific County Health Department	37,935	75,871	113,806
Tacoma-Pierce County Health Department	1,372,177	2,744,353	4,116,530
San Juan County Health and Community Services	15,058	30,116	45,174
Skagit County Health Department	98,115	196,230	294,345
Snohomish Health District	1,090,447	2,180,893	3,271,340
Spokane County Health District	1,027,015	2,054,031	3,081,046
Northeast Tri-County Health District	47,995	95,991	143,986
Thurston County Health Department	287,121	574,242	861,363
Wahkiakum County Health Department	6,748	13,495	20,243
Walla Walla County-City Health Department	83,532	167,063	250,595
Whatcom County Health Department	409,608	819,215	1,228,823
Whitman County Health Department	38,071	76,142	114,213
Yakima Health District	300,347	600,694	901,041
TOTAL APPROPRIATIONS	\$11,061,266	\$22,122,535	\$33,183,801

NEW SECTION. Sec. 709. A new section is added to 1999 c 309 (uncodified) to read as follows:

FOR NISQUALLY EARTHQUAKE RELIEF

Emergency Reserve Fund—State Appropriation \$ 56,336,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The emergency reserve fund appropriation is in response to the emergency caused by a natural disaster known as the Nisqually earthquake, declared by chapter 5, Laws of 2001, the governor, and the president of the United States.

(2) The emergency reserve fund appropriation is provided solely for deposit in the Nisqually earthquake account—state.

(3) \$728,000 is appropriated from the Nisqually earthquake account—state and \$558,000 is appropriated from the Nisqually earthquake account—federal to the military department solely for costs associated with coordinating the state's response to the February 28, 2001, earthquake with the federal emergency management agency.

(4) \$1,986,000 is appropriated from the Nisqually earthquake account—state and \$6,878,000 is appropriated from the Nisqually earthquake account—federal to the military department solely for public assistance costs associated with the earthquake for state and local agencies. Of the appropriation from the Nisqually earthquake account—state in this subsection, \$1,680,000 is provided for the state matching share for state agencies and \$306,000 is provided for one-half of the local matching share for local entities. The amount provided for the local matching share constitutes a revenue distribution for purposes of RCW 43.135.060(1).

PART VIII

OTHER TRANSFERS AND APPROPRIATIONS

Sec. 801. 2000 2nd sp.s. c 1 s 802 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

Local Toxics Control Account: For transfer to the state toxics control account on or before June 1, 2000, an amount equal to \$1,500,000. This transfer shall be repaid to the local toxics control account from moneys in the state toxics control account by June 30, 2005. The transfer shall be repaid prior to June 30, 2005, to the extent that moneys are received from the cost recovery action at the Everett smelter site \$ 1,500,000

Park Land Trust Revolving Fund: For transfer to the common school construction fund,

\$13,350,000 of the amount deposited into the park land trust revolving fund on January 6, 2000, plus all interest attributed to that amount that has accrued since deposit, up to (~~(\$13,550,000)~~) \$13,650,400.

Nothing in this section constitutes an authorization or ratification of the transaction that resulted in this deposit \$ ((~~13,550,000~~)) 13,650,400

Park Land Trust Revolving Fund: For transfer to the natural resources real property replacement account, \$3,200,000 of the amount deposited into the park land trust revolving fund on January 6, 2000, plus all interest attributed to that amount that has accrued since deposit, up to \$3,300,000. Nothing in this section constitutes an authorization or ratification of the transaction that resulted in this deposit \$ 3,300,000

Sec. 802. 1999 c 309 s 803 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

General Fund: For transfer to the Water Quality Account \$ 83,423,000

General Fund: For transfer to the Flood Control Assistance Account \$ 4,000,000

State Convention and Trade Center Account: For transfer to the State Convention and Trade Center Operations Account \$ 3,800,000

Water Quality Account: For transfer to the Water Pollution Control Account. Transfers shall be made at intervals coinciding with deposits of federal capitalization grant money into the account. The amounts transferred shall not exceed the match required for each federal deposit \$ 16,350,000

State Treasurer’s Service Account: For transfer to the general fund on or before June 30, 2001, an amount up to \$10,000,000 in excess of the cash requirements of the State Treasurer’s Service Account \$ 10,000,000

Public Works Assistance Account: For transfer to the Drinking Water Assistance Account \$ 7,700,000

County Sales and Use Tax Equalization Account: For transfer to the County Public Health Account	\$ 2,577,664
Public Health Services Account: For transfer to the County Public Health Account	\$ 1,056,000
State Emergency Water Projects Revolving Account: For transfer to the State Drought Preparedness Account	\$ 6,800,000
Tobacco Settlement Account: For transfer to the Health Services Account <u>in an amount not to exceed the actual balance of the tobacco settlement account</u>	\$ 223,087,000
State Toxics Control Account: For transfer to the local toxics control account on or before June 30, 2001, up to \$2,500,000, but not greater than the loan enacted in the 1999 supplemental budget. The exact amount and timing of the transfer shall be determined by the office of financial management, based on state toxics control account fund balances	\$ 2,500,000
<u>Health Services Account: For transfer to the state general fund by June 30, 2001, for health services purposes consistent with RCW 43.72.900. Pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased in fiscal year 2001 to reflect this transfer</u>	\$ <u>121,000,000</u>

**PART IX
MISCELLANEOUS**

Sec. 901. 2000 c 241 s 4 (uncodified) is amended to read as follows:

JOINT TASK FORCE ON LOCAL GOVERNMENTS

This act expires March 30, (~~2002~~) 2001.

NEW SECTION. Sec. 902. 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. 903. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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Passed the House April 20, 2001.

Passed the Senate April 18, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 118

[Substitute House Bill 1339]

TAXATION—FARMERS

AN ACT Relating to providing equity in the taxation of farmers; and amending RCW 82.04.100, 82.04.213, 82.04.330, 82.08.0259, 82.12.0261, 82.19.040, and 82.19.050.

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

Sec. 1. RCW 82.04.100 and 1987 c 23 s 3 are each amended to read as follows:

"Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products, or takes fish, ~~((or takes, cultivates, or raises))~~ shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others ~~((; persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession)); or persons ((who fell, cut, or take plantation Christmas trees from the person's own land or from land in which the person has a present right of possession))~~ meeting the definition of farmer under RCW 82.04.213.

Sec. 2. RCW 82.04.213 and 1993 sp.s. c 25 s 302 are each amended to read as follows:

(1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals ~~((intended to be pets))~~ defined as pet animals under RCW 16.70.020.

(2) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product ~~((whatsoever for sale))~~ to be sold. "Farmer" does not include ~~((a person using such products as ingredients in a manufacturing process, or))~~ a person growing, raising, or producing such products for the person's own consumption ~~((;"Farmer" does not include));~~ a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house ~~((;"Farmer" does not include any));~~ or a person in respect to the business of taking, cultivating, or raising timber.

Sec. 3. RCW 82.04.330 and 1993 sp.s. c 25 s 305 are each amended to read as follows:

This chapter shall not apply to any farmer that sells any agricultural product at wholesale or to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. This exemption shall not apply to any person selling such products at retail or to any person selling manufactured substances or articles.

This chapter shall also not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program.

Sec. 4. RCW 82.08.0259 and 1980 c 37 s 27 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of ~~((purebred))~~ livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows used on the farm.

Sec. 5. RCW 82.12.0261 and 1980 c 37 s 60 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of ~~((purebred))~~ livestock, as defined in RCW 16.36.005, for breeding purposes where said animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows used on the farm.

Sec. 6. RCW 82.19.040 and 1992 c 175 s 6 are each amended to read as follows:

(1) To the extent applicable, all of the ~~((provisions))~~ definitions of chapter ~~((s))~~ 82.04 RCW and all of the provisions of chapter 82.32 RCW apply to the tax imposed in this chapter ~~((, except RCW 82.04.220 through 82.04.290, and 82.04.330)).~~

(2) Taxes collected under this chapter shall be deposited in the waste reduction, recycling, and litter control account under RCW 70.93.180.

Sec. 7. RCW 82.19.050 and 1992 c 175 s 7 are each amended to read as follows:

The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state; or

(2) The value of products or gross proceeds of the sales ~~((of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect))~~ exempt from tax under RCW 82.04.330.

Passed the House March 9, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 119

[Engrossed House Bill 1530]

LOCAL GOVERNMENT—SERVICE OF CLAIMS

AN ACT Relating to serving claims against local governmental entities for tortious conduct; and amending RCW 4.96.010 and 4.96.020.

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

Sec. 1. RCW 4.96.010 and 1993 c 449 s 2 are each amended to read as follows:

(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, ~~((or))~~ quasi-municipal corporation, or public hospital.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

Sec. 2. RCW 4.96.020 and 1993 c 449 s 3 are each amended to read as follows:

(1) The provisions of this section apply to claims for damages against all local governmental entities.

(2) The governing body of each local government entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against ~~((any such))~~ a local governmental entity ~~((for damages))~~ shall be presented to ~~((and filed with the governing body thereof))~~ the agent within the applicable period of limitations within which an action must be commenced.

(3) All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage,

describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

(4) No action shall be commenced against any local governmental entity for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

Passed the House March 9, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 120

[Substitute House Bill 1537]

CREDIT UNIONS—LIABILITY OF DIRECTORS

AN ACT Relating to credit union directors and committee members; and adding a new section to chapter 31.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 31.12 RCW to read as follows:

(1) Directors and committee members at a credit union or federal credit union have no personal liability for harm caused by acts or omissions performed on behalf of the credit union if: The director or committee member was acting within the scope of his or her duties at the time of the act or omission; the harm was not caused by an act in violation of RCW 31.12.267; the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed; and the harm was not caused by the director or committee member's operation of a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance.

(2) This section does not affect a director's or committee member's liability to the credit union or to a governmental entity for harm to the credit union or governmental entity caused by the director or committee member.

(3) This section does not affect the vicarious liability of the credit union with respect to harm caused to any person, including harm caused by the negligence of a director or committee member.

(4) This section does not affect the liability of employees of the credit union for acts or omissions done within the scope of their employment.

Passed the House March 9, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 121

[House Bill 1582]

TAXATION—MOTORCYCLES

AN ACT Relating to use tax on motorcycles loaned to the department of licensing or its contractors for purposes of providing motorcycle training; and adding a new section to chapter 82.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.12 RCW to read as follows:

This chapter does not apply to the use of motorcycles that are loaned to the department of licensing exclusively for the provision of motorcycle training under RCW 46.20.520, or to persons contracting with the department to provide this training.

Passed the House March 9, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 122

[Engrossed House Bill 1606]

IRRIGATION SERVICES—TARIFFS

AN ACT Relating to electricity rate structure for irrigation pumping installations; adding a new section to chapter 80.28 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 35.92 RCW; adding a new section to chapter 23.86 RCW; adding a new section to chapter 24.06 RCW; adding a new section to chapter 87.03 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 80.28 RCW to read as follows:

Upon request by an electrical company, the commission may approve a tariff for irrigation pumping service that allows the company to buy back electricity from customers to reduce electricity usage by those customers during the electrical company's particular irrigation season.

NEW SECTION. Sec. 2. A new section is added to chapter 54.16 RCW to read as follows:

The commission may approve a tariff for irrigation pumping service that allows the district to buy back electricity from customers to reduce electricity usage by those customers during the district's particular irrigation season.

NEW SECTION. Sec. 3. A new section is added to chapter 35.92 RCW to read as follows:

The council or board may approve a tariff for irrigation pumping service that allows the municipal utility to buy back electricity from customers to reduce electricity usage by those customers during the municipal utility's particular irrigation season.

NEW SECTION. Sec. 4. A new section is added to chapter 23.86 RCW to read as follows:

The board may approve a tariff for irrigation pumping service that allows the locally regulated utility to buy back electricity from customers to reduce electricity usage by those customers during the locally regulated utility's particular irrigation season.

NEW SECTION. Sec. 5. A new section is added to chapter 24.06 RCW to read as follows:

The board may approve a tariff for irrigation pumping service that allows the locally regulated utility to buy back electricity from customers to reduce electricity usage by those customers during the locally regulated utility's particular irrigation season.

NEW SECTION. Sec. 6. A new section is added to chapter 87.03 RCW to read as follows:

The board may approve a tariff for irrigation pumping service that allows the irrigation district to buy back electricity from customers to reduce electricity usage by those customers during the irrigation district's particular irrigation season.

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 House March 14, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 123

[Engrossed Substitute House Bill 1625]

FISCAL MATTERS—SUPPLEMENTAL CAPITAL BUDGET APPROPRIATIONS

AN ACT Relating to fiscal matters; amending 1999 c 379 ss 112, 758, and 937 (uncodified); amending 2000 2nd sp.s. c 1 ss 1008 and 1013 (uncodified); adding a new section to 1999 c 379

(uncodified); making appropriations; authorizing expenditures for capital improvements; and declaring an emergency.

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

**Sec. 1. 1999 c 379 s 112 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC
DEVELOPMENT**

Development Loan Fund (88-2-006) (00-2-004)

Reappropriation:

State Building Construction Account—State	\$	558,716
Washington State Development Loan		
Account—((State)) <u>Federal</u>	\$	<u>2,439,932</u>
Subtotal Reappropriation	\$	2,998,648

Appropriation:

Washington State Development Loan		
Account—((State)) <u>Federal</u>	\$	3,500,000
Prior Biennia (Expenditures)	\$	805,237
Future Biennia (Projected Costs)	\$	<u>18,000,000</u>
TOTAL	\$	25,303,885

**Sec. 2. 1999 c 379 s 758 (uncodified) is amended to read as follows:
FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Minor Works: Program (00-1-130)

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

(1) \$350,000 is provided for technical engineering analysis and financial planning regarding the conversion to digital transmission for Washington public broadcast stations. The financial plan shall assess state, federal, nonprofit foundations, viewer donations, and other sources of revenue to implement the conversion from analog to digital transmission. The provision of these study funds do not imply a further commitment of funding by the state of Washington.

(2) Funding is provided (~~from the state building construction account~~) as capital project matching funds to the following colleges: Wenatchee Valley, \$250,000; Clark, \$250,000; Lake Washington, \$300,000; Bellevue, \$500,000; Walla Walla, \$500,000; Grays Harbor, \$400,000. State funds shall be matched by an equal or greater amount of nonstate moneys.

(3) Following the allocation of funds for the projects in subsections (1) and (2) of this section, the appropriations in this section shall support the detailed list of projects maintained by the office of financial management.

Appropriation:

State Building Construction Account—State	\$	15,050,000
Community and Technical Colleges Capital Projects		
Account—State	\$	1,800,000

Subtotal Appropriation	\$	16,850,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	16,850,000

Sec. 3. 2000 2nd sp.s. c 1 s 1008 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF GENERAL ADMINISTRATION
 Legislative Building Renovation

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the review and allotment procedures under sections 902 and 903, chapter 379, Laws of 1999.

(2) ~~(\$2,000,000)~~ \$4,500,000 of the appropriation in this section is provided for design of the interior rehabilitation and exterior preservation ~~((of))~~ and earthquake-related costs associated with the state legislative building ~~((consistent with the recommendations of the commission on legislative building preservation and renovation)).~~ Funds in this subsection are also provided for planning ~~((and development of)),~~ developing, and securing relocation space for current and future construction projects related to the capitol historic district ~~((as well as access))~~ and site improvements ~~((to the south portico area)).~~

(3) The department, in consultation with the legislature, the governor, and the state capitol committee, shall immediately begin planning and initiate an accelerated design/construction schedule for the renovation of the state legislative building as follows:

(a) No new permanent buildings shall be constructed, and the department shall follow standards for historic preservation;

(b) The goal shall be to reoccupy the building in time for the 2004 legislative session;

(c) The department shall make temporary accommodations for the displacement of legislators and legislative staff in the John L. O'Brien building, the Pritchard building, the Cherberg building, and the Newhouse building;

(d) The department shall temporarily move the state library to the Sunset Life building by June 30, 2001, and, if needed, the department shall lease storage facilities in Thurston county for books and other library assets;

(e) The department shall make temporary accommodations for other tenants of the state legislative building as follows:

(i) The office of the insurance commissioner shall be temporarily moved to leased space in Thurston county;

(ii) The office of the governor shall be moved to the Insurance building;

(iii) The office of the code reviser and the lieutenant governor shall be moved to a location on the west capitol campus; and

(iv) The other tenants, including the office of the state treasurer, the office of the state auditor, and the office of the secretary of state shall be moved to leased space in Thurston county;

(f) The state legislative building shall be completely vacated by September 15, 2001, to make it available for renovation by the contractor; and

(g) State contracts for the legislative building renovation, Nisqually earthquake repair, and future earthquake mitigation shall conform to all rules, regulations, and requirements of the federal emergency management agency,

(4) \$1,000,000 of the appropriation in this section is provided for associated studies including:

(a) A private financing feasibility study;

(b) An investigation of exterior sandstone attachment; and

(c) A space use programming study to include:

(i) A prioritization of uses within the legislative building based on functional affiliation with the legislative process and the ceremonial functions of state-wide office holders that takes into consideration emerging telecommunication capabilities;

(ii) An analysis of space efficiency and space use related to legislative and state-wide ceremonial functions in the following buildings: Cherberg, O'Brien, Pritchard, Newhouse, the governor's mansion, and insurance;

(iii) A review of alternative uses and expansion capabilities for buildings on the capitol campus; and

(iv) By November 30, 2000, the department shall submit a report to the appropriate committees of the legislature on the recommendations of the space use programming study. These recommendations shall be the basis for the planning and development of relocation space for the capitol historic district ~~((as specified in subsection (2) of this section)).~~

~~((4))~~ (5) The state capitol committee, in conjunction with a legislative building renovation oversight committee consisting of two members from both the house of representatives and senate, each appointed by legislative leadership, shall;

(a) Develop criteria and guidelines for the space programming study; and

(b) Periodically advise the department regarding the renovation under subsection (3) of this section, the receipt and use of private funds, and other issues that may arise.

~~((5))~~ (6) From the appropriation in this section, up to \$10,000 or an amount based on an appraised value may be expended to acquire a photo and document collection of historic significance that depicts legislative activities and facilities.

(7) The department shall report on the progress of accelerated planning, design, and relocations related to the renovation of the state legislative building to the legislature and the governor by July 15, 2001, and September 15, 2001, and shall consult with the legislature and governor on major decisions.

Appropriation:

Capitol Building Construction Account \$ 3,000,000

<u>Thurston County Facilities Account</u>	\$	<u>2,500,000</u>
<u>Subtotal Appropriation</u>	\$	<u>2,500,000</u>
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>102,500,000</u>
TOTAL	\$	((+105,500,000)) 108,000,000

Sec. 4. 2000 2nd sp.s. c 1 s 1013 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES
 Special Commitment Center: Phase I (00-2-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the review and allotment procedures under sections 902 and 903, chapter 379, Laws of 1999.

(2) The appropriation in this section is provided for design, sitework, and construction costs associated with building the first ~~((48-bed))~~ housing unit for the special commitment center located at McNeil Island. The department of social and health services shall notify the office of financial management and the legislative fiscal committees if there are changes to the scheduled March 2002 occupancy date.

(3) Within the funds provided in this section, the department of social and health services shall evaluate options and site locations for less restrictive alternative placements. The department of social and health services shall provide a report to the office of financial management and the legislative fiscal committees detailing the results of this evaluation, including statutory changes necessary to implement preferred options, by November 15, 2000.

Appropriation:

State Building Construction Account—State	\$	14,000,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>50,000,000</u>
TOTAL	\$	64,000,000

NEW SECTION. Sec. 5. A new section is added to 1999 c 379 (uncodified) to read as follows:

FOR THE UNIVERSITY OF WASHINGTON
 UW Tacoma Land Acquisition (01-2-029)

Appropriation:

Education Construction Account—State	\$	2,500,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>4,000,000</u>
TOTAL	\$	6,500,000

Sec. 6. 1999 c 379 s 937 (uncodified) is amended to read as follows:

FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Highline Community College - Classroom/Laboratory Building: Construction (98-2-660)

The appropriations in this section are subject to the review and allotment procedures under sections 902 and 903 of this act.

Reappropriation:

State Building Construction Account—State \$ 310,000

Appropriation:

State Building Construction Account—State \$ 5,900,000

Education Construction Account—State \$ 1,315,000

Subtotal Appropriation \$ 7,215,000

Prior Biennia (Expenditures) \$ 79,717

Future Biennia (Projected Costs) \$ 0

TOTAL \$ ((6,289,717))
7,604,717

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House April 21, 2001.

Passed the Senate April 20, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 124

[Substitute House Bill 1915]

WINE TAX

AN ACT Relating to modifying wine and cider provisions by removing a termination date; amending RCW 66.24.210; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 66.24.210 and 1997 c 321 s 8 are each amended to read as follows:

(1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to

another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. ~~((The additional taxes imposed by this subsection (3) shall cease to be imposed on July 1, 2001.))~~ All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010~~((37))~~ (38) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

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 July 1, 2001.

Passed the House March 12, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 125

[House Bill 2029]

MOTOR VEHICLES—REGISTRATION

AN ACT Relating to certificates of ownership and registration; amending RCW 46.12.040 and 46.12.060; reenacting and amending RCW 46.12.030; adding a new section to chapter 46.12 RCW; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 46.12.030 and 1995 c 274 s 1 and 1995 c 256 s 23 are each reenacted and amended to read as follows:

The application for ~~((a))~~ a certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

(1) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(2) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(3) Such other information as the department may require. The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either. A physical examination of the vehicle is mandatory if ~~((it previously was registered in any other state or country or if))~~ it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the ~~((foreign))~~ title and registration certificate. ~~((If the vehicle is from a jurisdiction that does not issue titles, the inspection must verify that the vehicle identification number is genuine and agrees with the number shown~~

on the registration certificate. The inspection must also confirm that the license plates on the vehicle are those assigned to the vehicle by the jurisdiction in which the vehicle was previously licensed.) The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

The application shall be subscribed by the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form.

Sec. 2. RCW 46.12.040 and 1990 c 238 s 2 are each amended to read as follows:

The application accompanied by a draft, money order, certified bank check, or cash for one dollar and twenty-five cents, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

In addition to the application fee and any other fee for the license registration of a vehicle, ~~((there shall be collected from the applicant an inspection fee whenever a physical examination of the vehicle is required as a part of the vehicle licensing or titling process:~~

~~—For vehicles previously registered in any other state or country, the inspection))~~ the department shall collect from the applicant a fee ((shall be)) of fifteen dollars ((and)) for vehicles previously registered in any other state or country. The proceeds from the fee shall be deposited in the motor vehicle fund. For ((all other)) vehicles requiring a physical examination, the inspection fee shall be ((twenty)) fifty dollars and shall be deposited in the motor vehicle fund.

NEW SECTION. Sec. 3. A new section is added to chapter 46.12 RCW to read as follows:

The department shall institute software and systems modifications to enable a WACIC/NCIC stolen vehicle search of out-of-state vehicles as part of the title transaction. During the stolen vehicle search, if the information obtained indicates the vehicle is stolen, that information shall be immediately reported to the state patrol and the applicant shall not be permitted to register the vehicle. Vehicles for which the stolen vehicle check is negative shall be registered if the department is satisfied that all other requirements have been met.

Sec. 4. RCW 46.12.060 and 1975 c 25 s 10 are each amended to read as follows:

Before the department shall issue a certificate of ownership, or reissue such a certificate, covering any vehicle, the identification number of which has been altered, removed, obliterated, defaced, omitted, or is otherwise absent, the registered owner of the vehicle shall file an application with the department,

accompanied by a fee of five dollars, upon a form provided, and containing such facts and information as shall be required by the department for the assignment of a special number for such vehicle. Upon receipt of such application, the department, if satisfied the applicant is entitled to the assignment of an identification number, shall designate a special identification number for such vehicle, which shall be noted upon the application therefor, and likewise upon a suitable record of the authorization of the use thereof, to be kept by the department. This assigned identification number shall be placed or stamped in a conspicuous position upon the vehicle in such manner and form as may be prescribed by the department. Upon receipt by the department of ~~((a certificate by an officer of the Washington state patrol, or other person authorized by the department, that the vehicle has been inspected and that the identification number or the special number plate, has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by))~~ an application for a certificate of ownership or application for reissue of such certificate and the required fee therefor, the department shall use such number as the numerical or alpha-numerical identification marks for the vehicle in any certificate of license registration or certificate of ownership that may thereafter be issued therefor.

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 July 1, 2001.

Passed the House April 16, 2001.

Passed the Senate March 23, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 126

[Engrossed Substitute House Bill 2191]

TAXATION—LEASED PROPERTY

AN ACT Relating to property tax exemptions for property leased by public entities; amending RCW 84.36.040, 84.36.050, and 84.36.815; reenacting and amending RCW 84.36.810; and creating a new section.

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

Sec. 1. RCW 84.36.040 and 1989 c 379 s 1 are each amended to read as follows:

(1) The real and personal property used by nonprofit (a) day care centers as defined pursuant to RCW 74.15.020; (b) free public libraries; (c) orphanages and orphan asylums; (d) homes for the sick or infirm; (e) hospitals for the sick; and (f) outpatient dialysis facilities, which are used for the purposes of such organizations shall be exempt from taxation: PROVIDED, That the benefit of the exemption inures to the user.

(2) The real and personal property leased to and used by a hospital, owned and operated by a public hospital district established under chapter 70.44 RCW, for hospital purposes is exempt from taxation. The benefit of the exemption must inure to the user.

(3) 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.

Sec. 2. RCW 84.36.050 and 1984 c 220 s 5 are each amended to read as follows:

The following property (~~shall be~~) is exempt from taxation:

(1) Property owned or used for any nonprofit school or college in this state for educational purposes or cultural or art educational programs as defined in RCW 82.04.4328. Real property so exempt shall not exceed four hundred acres in extent and, except as provided in RCW 84.36.805, shall be used exclusively for college or campus purposes including but not limited to, buildings and grounds designed for the educational, athletic, or social programs of (~~said~~) the institution, the housing of students, the housing of religious faculty, the housing of the chief administrator, athletic buildings and all other school or college facilities, the need for which would be nonexistent but for the presence of (~~such~~) the school or college and which are principally designed to further the educational functions of (~~such~~) the college or schools. If the property is leased, the benefit of the exemption (~~shall~~) must inure to the user;

(2) Real or personal property owned by a not-for-profit foundation that is established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016. The property is exempt if it is leased to and used by the institution exclusively for college or campus purposes and is principally designed to further the educational functions of the institution. The exemption is only available for property actively utilized by currently enrolled students. The benefit of the exemption must inure to the user.

Sec. 3. RCW 84.36.810 and 1999 c 203 s 3 and 1999 c 139 s 4 are each reenacted and amended to read as follows:

(1)(a) 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, 84.36.560, and 84.36.570, except as provided in (b) of this subsection, 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. If the property has been granted an exemption for more than ten consecutive years, taxes and interest shall not be assessed under this section.

(b) Upon cessation of use by an institution of higher education of property exempt under RCW 84.36.050(2) the county treasurer shall collect all taxes which

would have been paid had the property not been exempt during the seven years preceding, or the life of the exemption, whichever is less.

(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 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 this chapter;

(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 this chapter or RCW 84.36.560; 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.

(3) Subsections (2)(e) and (f) of this section do not apply to property leased to a state institution of higher education and exempt under RCW 84.36.050(2).

Sec. 4. RCW 84.36.815 and 1998 c 311 s 27 are each amended to read as follows:

In order to qualify for exempt status for any real or personal property under this chapter except personal property under RCW 84.36.600, all foreign national governments((:)); cemeteries((:)); nongovernmental nonprofit corporations, organizations, and associations((:)); hospitals owned and operated by a public hospital district for purposes of exemption under RCW 84.36.040(2); and soil and water conservation districts shall file an initial application on or before March 31 with the state department of revenue. All applications shall be filed on forms prescribed by the department and shall be signed by an authorized agent of the applicant.

In order to requalify for exempt status, all applicants except nonprofit cemeteries shall file an annual renewal declaration on or before March 31 each year. The renewal declaration shall be on forms prescribed by the department of revenue and shall contain an affidavit certifying the exempt status of the real or personal property owned by the exempt organization. When an organization acquires real property qualified for exemption or converts real property to exempt status, such organization shall file an initial application for the property within

sixty days following the acquisition or conversion. If the application is filed after the expiration of the sixty-day period a late filing penalty shall be imposed pursuant to RCW 84.36.825, as now or hereafter amended.

When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted.

NEW SECTION. Sec. 5. This act applies to taxes levied for collection in 2002 and thereafter.

Passed the House March 14, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 127

[Senate Bill 5223]

RAIL FIXED GUIDEWAY SYSTEMS—SAFETY AUDIT REIMBURSEMENT

AN ACT Relating to transportation safety and planning; and amending RCW 81.104.115.

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

Sec. 1. RCW 81.104.115 and 1999 c 202 s 7 are each amended 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 RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 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 RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 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. The owner or operator of each rail fixed guideway system shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the owner or operator of the estimated expenses at least six months in advance of when the department audits the system.

(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 RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 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.

Passed the Senate March 10, 2001.
Passed the House April 6, 2001.
Approved by the Governor April 27, 2001.
Filed in Office of Secretary of State April 27, 2001.

CHAPTER 128

[Substitute Senate Bill 5335]
ENHANCED 911 SERVICE

AN ACT Relating to the authority of the statewide enhanced 911 program to support the statewide enhanced 911 system; amending RCW 38.52.540; adding a new section to chapter 38.52 RCW; 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. The legislature finds that the statewide emergency communications network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, has served to further the safety, health, and welfare of the state's citizens, and has saved lives.

The legislature further finds that statewide operation and management of the enhanced 911 system will create efficiencies of operation and permit greater local control of county 911 operations, and further that some counties will continue to need assistance from the state to maintain minimum enhanced 911 service levels.

Sec. 2. RCW 38.52.540 and 1998 c 304 s 14 are each amended to read as follows:

The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise tax imposed by RCW 82.14B.030 shall be deposited into the account. Moneys in the account shall be used only to ~~((help implement and operate enhanced 911 statewide. Moneys in the account may be used to provide salary assistance on a temporary basis not to exceed three years to counties with a population of less than seventy-five thousand that need additional resources to cover unfunded costs that can be shown to result from handling 911 calls. Moneys in the account may be used to assist multicounty regions, including ongoing salary assistance for multicounty regions consisting of counties with populations of less than seventy-five thousand. However;))~~ support the statewide coordination and management of the enhanced 911 system and to help supplement, within available funds, the operational costs of the system. Funds shall not be distributed to any county that has not imposed the maximum county enhanced 911 taxes allowed under RCW 82.14B.030 (1) and (2). The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of enhanced 911 services for all counties and shall specify by rule the additional purposes for which moneys, if available, may be expended from this account.

NEW SECTION. Sec. 3. A new section is added to chapter 38.52 RCW to read as follows:

In specifying rules defining the purposes for which available moneys may be expended, the state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall consider base needs of individual counties for specific assistance. Priorities for available enhanced 911 funding are as follows: (1) To assure that 911 dialing is operational statewide; (2) to assist counties as necessary to assure that they can achieve a basic service level for 911 operations; and (3) to assist counties as practicable to acquire items of a capital nature appropriate to increasing 911 effectiveness.

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, 2001.

Passed the Senate March 5, 2001.

Passed the House April 9, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 129

[Substitute Senate Bill 5484]

TAXATION—CONIFER SEEDS

AN ACT Relating to taxation of businesses selling conifer seed or growing seedlings; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that in-state sellers of conifer seed and persons growing customer-owned conifer seed into seedlings are placed at a marketplace disadvantage compared to persons doing the same activity out of state because of the unique storage and growing requirements of conifer seed. It is the intent of the legislature to eliminate this disadvantage by providing a limited sales tax exemption for the sale of conifer seed to be used to grow timber outside Washington, or sold to an Indian tribe or member to grow timber in Indian country, if upon sale the seed is immediately placed into freezer storage operated by the seller.

NEW SECTION. Sec. 2. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller and is: (a) Used for growing timber outside Washington; or (b) sold to an Indian tribe or member and is to be used for growing timber in Indian country. This section applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the

certificate for the seller's files. For the purposes of this section, "Indian country" has the meaning given in RCW 82.24.010.

(2) If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase.

(3) A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax exemption provided in this section is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the purchased seed. The deduction is allowed only if the buyer keeps and preserves records that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid.

NEW SECTION. Sec. 3. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This section applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country.

If the owner of conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed is exempt from tax under this section, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. For the purposes of this section, "Indian country" has the meaning given in RCW 82.24.010.

NEW SECTION. Sec. 4. This act applies retroactively.

Passed the Senate March 13, 2001.

Passed the House April 6, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 130

[Substitute Senate Bill 6053]

STATE ROUTE NUMBER 525

AN ACT Relating to state route number 525; and amending RCW 47.17.735.

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

Sec. 1. RCW 47.17.735 and 1994 c 209 s 8 are each amended to read as follows:

A state highway to be known as state route number 525 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence northwesterly to the state ferry terminal at Mukilteo; ~~also~~

From the junction with state route number 526 at Mukilteo, thence southerly to a junction with state route number 525; also

From the state ferry terminal at Mukilteo via the state ferry system northerly to the state ferry terminal at Clinton; also

From the state ferry terminal at Clinton, thence northwesterly to a junction with state route number 20 in the vicinity east of Keystone.

Passed the Senate March 12, 2001.

Passed the House April 5, 2001.

Approved by the Governor April 27, 2001.

Filed in Office of Secretary of State April 27, 2001.

CHAPTER 131

[Substitute House Bill 1000]

PUBLIC WORKS BOARD—BUDGET AUTHORITY

AN ACT Relating to the budget authority of the public works board, expenditures from the public works assistance account, and clarifying capital facility planning requirements; amending RCW 43.155.020, 43.155.065, 43.155.068, and 43.155.070; and reenacting and amending RCW 43.155.050.

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

Sec. 1. RCW 43.155.020 and 1996 c 168 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) "Board" means the public works board created in RCW 43.155.030.

(2) "Capital facility plan" means a capital facility plan required by the growth management act under chapter 36.70A RCW or, for local governments not fully planning under the growth management act, a plan required by the public works board.

(3) "Department" means the department of community, trade, and economic development.

~~((3))~~ (4) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

~~((4))~~ (5) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

~~((5))~~ (6) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems and solid waste facilities, including recycling facilities. A planning project may include the compilation of biological, hydrological, or other data on a county, drainage basin, or region necessary to develop a base of information for a capital facility plan.

~~((6))~~ (7) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.

~~((7))~~ (8) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities.

Sec. 2. RCW 43.155.050 and 1995 2nd sp.s. c 18 s 918 and 1995 c 376 s 11 are each reenacted and amended to read as follows:

The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. ~~((During the 1995-97 fiscal biennium, moneys in the public works assistance account may be appropriated for transfer to the flood control assistance account to be used for flood control assistance, including grants under chapter 86.26 RCW. To the extent that moneys in the public works assistance account are not appropriated during the 1995-97 fiscal biennium for public works or flood control assistance, the legislature may direct their transfer to the state general fund. In awarding grants under chapter 86.26 RCW, the department of ecology shall give strong preference to local governments that have: (1) Implemented, or are in the process of implementing, an ordinance that establishes a flood plain policy that is substantially more stringent than minimum federal requirements; (2) completed a comprehensive flood control plan meeting the requirements of RCW 86.12.200; or (3) constructed, or are in the process of constructing, a system of overtopping dikes or levees that allow public access.))~~ Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital

budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans.

Sec. 3. RCW 43.155.065 and 1990 c 133 s 7 are each amended to read as follows:

The board may make low-interest or interest-free loans to local governments for emergency public works projects. Emergency public works projects shall include the construction, repair, reconstruction, replacement, rehabilitation, or improvement of a public water system that is in violation of health and safety standards and is being operated by a local government on a temporary basis. The loans may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following sources: (1) Federal disaster or emergency funds, including funds from the federal emergency management agency; (2) state disaster or emergency funds; (3) insurance settlements; or (4) litigation. ~~((Emergency loans may be made only from those funds specifically appropriated from the public works assistance account for such purpose by the legislature. The amount appropriated from the public works assistance account for emergency loan purposes shall not exceed five percent of the total amount appropriated from this account in any biennium.))~~

Sec. 4. RCW 43.155.068 and 1995 c 363 s 2 are each amended to read as follows:

(1) The board may make low-interest or interest-free loans to local governments for preconstruction activities on public works projects before the legislature approves the construction phase of the project. Preconstruction activities include design, engineering, bid-document preparation, environmental studies, right of way acquisition, and other preliminary phases of public works projects as determined by the board. The purpose of the loans authorized in this section is to accelerate the completion of public works projects by allowing preconstruction activities to be performed before the approval of the construction phase of the project by the legislature.

(2) Projects receiving loans for preconstruction activities under this section must be evaluated using the priority process and factors in RCW 43.155.070(2). The receipt of a loan for preconstruction activities does not ensure the receipt of a construction loan for the project under this chapter. Construction loans for projects receiving a loan for preconstruction activities under this section are subject to legislative approval under RCW 43.155.070 (4) and (5). The board shall adopt a single application process for local governments seeking both a loan for preconstruction activities under this section and a construction loan for the project.

~~((3) Preconstruction activity loans under this section may be made only from those funds specifically appropriated from the public works assistance account for such a purpose by the legislature.))~~

Sec. 5. RCW 43.155.070 and 1999 c 164 s 602 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))~~ capital facility 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.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 must have adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a loan or loan guarantee 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.

(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.

(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.

(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 (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.

(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.

(8) Subsection (7) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section.

(9) ~~((a))~~ Loans made for the purpose of capital facilities plans shall be exempted from subsection (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:)~~

(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.

Passed the House February 20, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 132

[Substitute House Bill 1001]

PUBLIC WORKS BOARD—PROJECT AUTHORIZATION

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

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

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

- (1) Admiral's Cove Water District—domestic water project—replace/relocate deteriorated and undersized water mains. Replace fire hydrants. Controls and other related equipment and materials will be installed \$677,250
- (2) City of Airway Heights—domestic water project—replace deteriorated water mains, purchase and develop a new well, and install a transmission main. Install related equipment and material \$2,911,846
- (3) Annapolis Water District—domestic water project—repair and paint two water tanks \$104,967
- (4) Annapolis Water District—domestic water project—replace water mains throughout the Bethel Avenue corridor \$1,043,970
- (5) Annapolis Water District—domestic water project—replace chlorination systems \$198,883
- (6) City of Auburn—domestic water project—install two corrosion control facilities and related equipment and materials necessary to complete the project \$4,299,500
- (7) City of Bremerton—sanitary sewer project—construct a sanitary sewer facility including odor controls, disinfection, and related equipment

- \$3,000,000
- (8) Bryn Mawr-Lakeridge Water and Sewer District—domestic water project—replace water mains, water services, and pressure reducing equipment. In addition, fire hydrants and emergency water supply intertie will be installed \$1,051,980
- (9) City of Castle Rock—sanitary sewer project—upgrade wastewater treatment plant. To include installation of new aeration basins and clarifiers, upgrade pumps, disinfection facilities will be improved, and other components will be upgraded as necessary \$1,241,000
- (10) Cedar River Water and Sewer District—domestic water project—replace water mains, abandon a well, and install new lines. Install or replace other related material and equipment as needed \$2,686,000
- (11) City of Chelan—sanitary sewer project—upgrade and expand the wastewater treatment plant. To include replacement of two lift stations and two sewage siphons. Install or replace other related material and equipment as needed \$4,969,000
- (12) Clark Public Utility—domestic water—construct a new well and pumping station in the Pioneer area \$286,855
- (13) Coal Creek Utility District—sanitary sewer project—upgrade and relocate a lift station, upsize the sewer mains, and relocate water lines \$828,750
- (14) Town of Colton—domestic water project—drill and develop a new well, install a new pump, construct a well house, and install necessary piping, equipment, controls, and electrical connections \$293,550
- (15) Cowlitz County PUD No. 1—domestic water project—replace water mains, install fire hydrants, and restore roadways \$430,400
- (16) City of Dayton—domestic water project—upgrade a well, replace telemetry systems, install controls equipment, replace water mains, and make other related improvements \$494,000
- (17) Town of Eatonville—domestic water project—construct a water filtration plant and the building to house the filtration equipment. Install controls, piping, fixtures, pumps, corrosion control equipment, disinfection equipment, and related material and equipment \$1,134,090
- (18) City of Everett—domestic water project—design and construct replacement sections of water transmission lines. Environmental, geotechnical, and related studies will be completed and other related equipment or material will be installed \$4,599,425
- (19) Fall City Water District—domestic water project—drill and develop a well, construct a well house, install controls, and make other related improvements \$110,500

(20) Town of Granger—domestic water project—replace water lines and install telemetry at various sites within the system, other related improvements, and repairs \$297,000

(21) Highline Water District—domestic water project—replace water mains. Fire hydrants, controls, valves, and other related equipment and material will be installed \$1,751,000

(22) King County Water District No. 83—domestic water project—replace water lines, and install valves, pressure reducing stations, and eliminated dead-end sections. Other related improvements and repairs will be made \$670,766

(23) City of Kirkland—sanitary sewer project—replace sewer lift station at Juanita and construct and install new wetwells, new storage capacity, new connections to existing sewer mains, and related equipment, materials, and buildings \$1,848,000

(24) Klickitat County—sanitary sewer project—construct a sanitary sewer system, including sewer lines, pumps, manholes, and treatment facility \$10,000,000

(25) Town of Lind—sanitary sewer project—design and construct a new effluent disinfection system. It will also inspect, repair, or replace several segments of the collection system pipes \$384,950

(26) City of Mount Vernon—bridge project—design and build a four-lane bridge crossing the Skagit River. Signal and related items will be installed or constructed as part of the project \$2,300,000

(27) Town of Naches—domestic water project—replace water mains and replace or rehabilitate pumps in two wells. Other related equipment, controls, and material will be installed \$169,575

(28) City of Nooksack—domestic water project—replace water lines, relocate the master water valve, install related equipment and materials, repair roadways, and return construction site to original state \$725,555

(29) City of Okanogan—domestic water project—install telemetry upgrades throughout the system \$165,750

(30) City of Olympia—bridge project—upgrade a major community pathway. Replace traffic signals with roundabouts, streets will be widened, the grades of some streets will be significantly altered, private driveways will be altered, bike paths will be constructed, and utilities will be placed underground. The 4th Avenue bridge will be replaced \$3,275,000

(31) Olympic View Water and Sewer District—domestic water project—replace water mains, install controls, equipment, and other related material \$153,170

(32) Pacific County Flood Control Zone District No. 1—storm sewer project—construct a storm water conveyance system and a new ocean outfall. Storm water lines, catchbasins, and other related equipment, controls, and material will be installed \$615,000

(33) City of Prosser—sanitary sewer project—modify the system’s headworks, clarifier, and effluent pumping system. Install a polymer feed system and repair or replace anaerobic digester and other related key components \$322,825

(34) City of Selah—domestic water project—interconnect wells and transmission lines, install new water mains, and upgrade telemetry systems \$3,177,900

(35) City of Shoreline—storm sewer project—evaluate, design, and construct drainage improvements on Ronald Bog Drainage Sub-Basin \$4,055,500

(36) Soos Creek Water and Sewer District—sanitary sewer project—install sewer lines and water mains along with manholes and related equipment and materials. Hydrants, valves, water services, and related items will be assessed and replaced as necessary \$1,452,650

(37) City of Sultan—domestic water project—replace water mains and make other related improvements, including, but not limited to, valve replacements, hydrant replacements, and roadway restoration \$920,550

(38) City of Union Gap—sanitary sewer project—upgrade its master lift station, replace lift pumps, replace electrical equipment, replace controls, and install a new generator. Other related repairs and improvements will be made if necessary . . \$684,250

(39) Val Vue Sewer District—sanitary sewer project—construct sanitary sewers and rehabilitate water and storm water components. Sewer mains will be replaced and a lift station will be constructed. Pump stations will be upgraded and other related improvements will be made \$1,394,170

(40) Valley Water District—domestic water project—install filtration units, make electrical improvements, install valves, install a disinfection system, rehabilitate a well, provide auxiliary power, drill a new well, and make reservoir improvements \$595,000

(41) City of Waitsburg—sanitary sewer project—rehabilitate its wastewater collection system and lift station. Construct a new wastewater treatment facility. Sewer mains will be replaced and other related improvements will be made \$800,000

(42) City of Wapato—sanitary sewer project—upgrade the disinfection system at the wastewater treatment facility \$388,500

(43) Whitworth Water District No. 2—domestic water project—install new water lines, valves, and related equipment and controls. Construct a reservoir and booster pump, and other related improvements will be made \$3,201,100

- (44) Woodinville Water District—domestic water project—retrofit all eight reservoirs with seismic isolation sensors, valves, and flexible expansion joints. Other related improvements will be made \$672,000
- (45) Yakima County—road project—pave over 12 miles of gravel road. Drainage facilities, traffic controls, and other related miscellaneous items will be made \$3,000,000
- (46) City of Zillah—domestic water project—upgrade the telemetry system that operates and controls the city’s water system. \$120,700
- (47) Emergency Public Works Loans—as authorized by RCW 43.155.065 \$1,000,000
- Section I total \$74,502,877

NEW SECTION. Sec. 2. An appropriation of \$93,593,068 for the biennium ending June 30, 2001, is hereby made from the public works assistance account to the department of community, trade, and economic development for the purposes of providing funds for the following project loans recommended by the public works board:

- (1) City of Burien—road project—reconstruct the road from 1st Avenue South to 10th Avenue SW. Travel lanes will be reduced from four to two and parking areas will be developed along both sides of the street. Sidewalks will also be constructed, turn lanes and traffic lights will be installed at key intersections, and other related improvements will be made \$2,440,016
- (2) City of Centralia—sanitary sewer project—install a sanitary sewer system that will replace septic systems. Each septic tank will be pumped and removed. Related equipment and materials will be installed as needed \$1,376,192
- (3) Clark Public Utilities—domestic water project—replace water lines in the Meadow Glade-Hazel Dell area. Other related improvements and repairs will be made to the system \$2,550,000
- (4) Clark Public Utilities—domestic water project—construct a new 3-million-gallon regional water reservoir, and other related improvements \$1,667,145
- (5) Town of Coupsville—sanitary sewer project—install effluent pumps, a standby generator, a second clarifier, and pipes, valves, and controls. Construct an oxidation ditch and convert to an ultraviolet disinfection system. Other related repairs and improvements will be made \$2,370,000
- (6) Cowlitz County—sanitary sewer project—expand the wastewater treatment facility, install a wastewater pump station, construct a force main, and make improvements to sewer lines, and other related repairs and improvements \$3,000,000
- (7) City of Elma—sanitary sewer project—construct a wastewater treatment plant, including but not limited to installation of a new pump and headworks, the

construction of Biolac plant, the construction of buildings to house the equipment, the installation of a new disinfection system, and the installation of related equipment and material \$2,346,748

(8) City of Everett—storm sewer project—upgrade the existing storm sewer system by rerouting storm sewer lines and upsizing narrow diameter lines. Other related material and equipment will be installed \$2,108,525

(9) City of Kalama—domestic water project—construct a water treatment plant, including development of associated buildings, ponds, and on-site storm detention facilities. Other related improvements or upgrades will be made \$4,170,625

(10) City of Kennewick—domestic water project—replace water lines throughout the jurisdiction along with associated valves, hydrants, and related equipment and material. In addition, the city will replace sewer lines and access points that are adjacent to water lines \$3,000,000

(11) City of Kent—domestic water project—assist in developing a regional water supply system beginning at the headworks and continuing to Tacoma’s pipeline. Install a diversion dam, intake, and intertie with Seattle, make enhancements for fish, additional storage capacity, and other related and necessary improvements \$10,000,000

(12) King County—sanitary sewer project—upgrade the Juanita Bay pump station. The capacity and condition of force mains will be evaluated during the project and improvements will be made as necessary. Work on the discharge system may also be completed as part of this project if necessary \$10,000,000

(13) Kitsap County—sanitary sewer project—install a new outfall line from its Kingston treatment plan. Other related improvements and repairs to the plant’s outfall system will be made \$2,605,000

(14) Kitsap County—bridge project—replace an existing bridge. Utilities will be relocated, fish habitat will be restored, and the old bridge will be removed. Other related improvements will be made \$897,812

(15) Lakewood Water District—domestic water project—construct two water treatment plants and install other related equipment and materials \$1,700,000

(16) City of Mossyrock—domestic water project—construct a reservoir and the associated transmission main. Associated equipment and material will also be installed \$286,315

(17) NE Sammamish Sewer & Water District—sanitary sewer project—replace sanitary sewer lift station and install equipment, controls, and material if necessary \$2,279,000

(18) City of Normandy Park—road project—design and construct a segment of First Avenue South. Associated equipment and material will be constructed or installed as needed. Bike lanes, curbs, and gutters will also be constructed
 \$712,139

(19) City of Port Townsend—sanitary sewer project—replace the outfall line, construct an effluent pump station, and install related equipment and materials as needed \$1,214,053

(20) City of Sammamish—road project—widen the roadway to provide curb, gutter, sidewalks, bicycle lanes, and planter strips on both sides of 228th Avenue. A raised median will be constructed to control left turns. Other related improvements will be made \$10,000,000

(21) City of Shoreline—storm sewer project—evaluate, design, and construct drainage improvements in Third Avenue drainage sub-basin \$1,959,500

(22) Skagit County PUD No. 1—domestic water project—enlarge a reservoir, design and construct a new raw water intake and pump station, and install controls and telemetry. Other related improvements and repairs will be made \$10,000,000

(23) City of South Bend—sanitary sewer project—replace sewer mains and side sewers to the property lines. Manholes will be repaired and catch basins will be rehabilitated. Other related improvements will be made \$982,748

(24) City of Tacoma—domestic water project—modify the Green River headworks, construct 42 miles of transmission lines, develop additional storage, construct fish restoration facilities, construct new water treatment facilities, and make other related improvements \$10,000,000

(25) City of Toppenish—sanitary sewer project—replace sanitary sewer pipes. Manholes will be replaced and connections to storm drains will be removed. New drywells will be connected to catch basins. All roadways affected by the project will be resurfaced. Other related improvements and repairs will be made \$1,207,000

(26) Woodinville Water District—domestic water project—replace water mains. Related improvements including but not limited to access development, valve replacement, and similar items will be made, and the roadways will be restored to its original condition \$3,254,000

(27) City of Yakima—sanitary sewer project—install sewer pipes and water mains. Repair or install new manholes, valves, and other equipment or material \$1,466,250

Section 2 total \$93,593,068
 Total of sections 1 and 2 \$168,095,945

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 20, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 133

[Substitute Senate Bill 5263]

NATIONAL GUARD—EMPLOYMENT RIGHTS

AN ACT Relating to employment rights of members of the reserve and national guard forces called to duty; amending RCW 73.16.015, 73.16.031, 73.16.033, 73.16.035, 73.16.051, 73.16.061, and 73.16.070; adding new sections to chapter 73.16 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 73.16 RCW to read as follows:

(1) It is the intent of the legislature to guarantee employment rights of members of the reserve and national guard forces who are called to active duty. The federal uniformed services employment and reemployment rights act of 1994 protects all such federal personnel. The legislature intends that similar provisions should apply to all such state personnel. Therefore, the legislature intends for this act to ensure protections for state-activated personnel similar to those provided by federal law for federal-activated personnel.

(2) The purposes of this chapter are to:

(a) Encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment that can result from such service;

(b) Minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(c) Prohibit discrimination against persons because of their service in the uniformed services.

(3) Therefore, the legislature intends that the governmental agencies of the state of Washington, and all the political subdivisions thereof, should be model employers in carrying out the provisions of this chapter.

Sec. 2. RCW 73.16.015 and 1951 c 29 s 2 are each amended to read as follows:

Any veteran entitled to the benefits of RCW 73.16.010 may enforce his or her rights hereunder by civil action in ~~((the))~~ superior court~~((s))~~.

Sec. 3. RCW 73.16.031 and 1953 c 212 s 1 are each amended to read as follows:

(As used in RCW 73.16.031 through 73.16.061, the term:

~~"Resident" means any person residing in the state.;~~) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the attorney general of the state of Washington or any person designated by the attorney general to carry out a responsibility of the attorney general under this chapter.

(2) "Benefit," "benefit of employment," or "rights and benefits" means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) "Employee" means a person in a position of employment.

(4) "Employer" means the person, firm, or corporation, the state, or any elected or appointed public official currently having control over the position that has been vacated.

(5) "Health plan" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(6) "Notice" means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(7) "Position of employment" means any position (other than temporary) wherein a person is engaged for a private employer, company, corporation, or the state (including a municipality, or political subdivision thereof).

(8) "Qualified," with respect to an employment position, means having the ability to perform the essential tasks of the position.

(9) "Rejectee" means a person rejected because he or she is not, physically or otherwise, qualified to enter the uniformed service.

(10) "Resident" means any person residing in the state with the intent to remain other than on a temporary or transient basis.

(11) "Seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(12) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty (including state-ordered active

duty), and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(13) "State" means the state of Washington, including the agencies and political subdivisions thereof.

(14) "Temporary position" means a position of short duration which, after being vacated, ceases to exist and wherein the employee has been advised as to its temporary nature prior to his or her engagement.

~~("Employer" means the person, firm, corporation, state and any political subdivision thereof, or public official currently having control over the position which has been vacated:~~

~~—"Rejectee" means a person rejected because he is not, physically or otherwise, qualified to enter the service:)~~

(15) "Undue hardship," in the case of actions taken by an employer, means actions requiring significant difficulty or expense when considered in light of:

(a) The nature and cost of the action needed under this chapter;

(b) The overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources; or the impact otherwise of such action upon the operation of the facility; and

(c) The type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

NEW SECTION. Sec. 4. A new section is added to chapter 73.16 RCW to read as follows:

(1) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(2) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (a) has taken an action to enforce a protection afforded any person under this chapter, (b) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (c) has assisted or otherwise participated in an investigation

under this chapter, or (d) has exercised a right provided for in this chapter. The prohibition in this subsection (2) applies with respect to a person regardless of whether that person has performed service in the uniformed services.

(3) An employer shall be considered to have engaged in actions prohibited:

(a) Under subsection (1) of this section, if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(b) Under subsection (2) of this section if the person's (i) action to enforce a protection afforded any person under this chapter, (ii) testimony or making of a statement in or in connection with any proceeding under this chapter, (iii) assistance or other participation in an investigation under this chapter, or (iv) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

Sec. 5. RCW 73.16.033 and 1953 c 212 s 2 are each amended to read as follows:

Any person who is a resident of this state or is employed within this state, and who voluntarily or upon ~~((demand))~~ order from competent authority, vacates a position of employment ~~((to determine his physical fitness to enter, or, who actually does enter upon active duty or training in the Washington National Guard, the armed forces of the United States, or the United States public health service))~~ for service in the uniformed services, shall, provided he or she meets the requirements of RCW 73.16.035, be reemployed forthwith: PROVIDED, That the employer need not reemploy such person if circumstances have so changed ~~((as to make it impossible, unreasonable, or against the public interest for him to do so))~~ such that reemployment would be impossible or unreasonable due to a change in the employer's circumstances, or would impose an undue hardship on the employer: PROVIDED FURTHER, That this section shall not apply to a temporary position.

If such person is still qualified to perform the duties of his or her former position, he or she shall be restored to that position or to a position of like seniority, status and pay. If he or she is not so qualified as a result of disability sustained during his or her service ~~((, or during the determination of his fitness for service))~~ in the uniformed services, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he or she shall be reemployed in such other position: PROVIDED, That such position shall provide him or her with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case.

Sec. 6. RCW 73.16.035 and 1969 c 16 s 1 are each amended to read as follows:

(1) In order to be eligible for the benefits of ((RCW 73.16.031 through 73.16.064)) this chapter, an applicant must comply with the following requirements:

((+He)) (a) The applicant must notify his or her employer as to his or her membership in the uniformed services within a reasonable time of accepting employment or becoming a member of the uniformed services. An employer may not take any action prohibited in section 4 of this act against a person because the person provided notice of membership in the uniformed services to the employer.

(b) The applicant must furnish a receipt of an honorable, or under honorable conditions discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed his or her service. Rejectees must furnish proof of orders for examination and rejection.

((2)He)) (c) The applicant must make written application to the employer or his or her representative ((within ninety days of the date of his separation or release from training and service. Rejectees must apply within thirty days from date of rejection)) as follows:

(i) In the case of an applicant whose period of service in the uniformed services was less than thirty-one days, by reporting to the employer:

(A) Not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the applicant from the place of that service to the applicant's residence; or

(B) As soon as possible after the expiration of the eight-hour period in (c)(i)(A) of this subsection, if reporting within that period is impossible or unreasonable through no fault of the applicant;

(ii) In the case of an applicant who is absent from a position of employment for a period of any length for the purposes of an examination to determine the applicant's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in (c)(i) of this subsection;

(iii) In the case of an applicant whose period of service in the uniformed services was for more than thirty days but less than one hundred eighty-one days, by submitting an application for reemployment with the employer not later than fourteen days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the applicant, the next first full calendar day when submission of such application becomes possible;

(iv) In the case of an applicant whose period of service in the uniformed services was for more than one hundred eighty days, by submitting an application for reemployment with the employer not later than ninety days after the completion of the period of service;

(v) In the case of an applicant who is hospitalized for, or convalescing from, an illness or injury incurred or aggravated during the performance of service in the uniformed services, at the end of the period that is necessary for the applicant to recover from such illness or injury, the applicant shall submit an application for reemployment with such employer. The period of recovery may not exceed two years. This two-year period shall be extended by the minimum time required to accommodate the circumstances beyond the applicant's control that make reporting within the two-year period impossible or unreasonable;

(vi) In the case of an applicant who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection (1)(c), the applicant does not automatically forfeit his or her entitlement to the rights and benefits conferred by this chapter, but is subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(d) An applicant who submits an application for reemployment shall provide to the applicant's employer, upon the request of that employer, documentation to establish that:

(i) The application is timely;

(ii) The applicant has not exceeded the service limitations set forth in this section, except as permitted under (c)(v) of this subsection; and

(iii) The applicant's entitlement to the benefits under this chapter has not been terminated pursuant to (e) of this subsection.

~~((3) If, due to the necessity of hospitalization, while on active duty, he is released or placed on inactive duty and remains hospitalized, he is eligible for the benefits of RCW 73.16.031 through 73.16.061: PROVIDED, That such hospitalization does not continue for more than one year from date of such release or inactive status: PROVIDED FURTHER, That he applies for his former position within ninety days after discharge from such hospitalization:~~

~~—(4) He)) (e) The applicant must return and reenter the office or position within ((three months)) the appropriate period specified in (c) of this subsection after serving four years or less in the uniformed services other than state-ordered active duty: PROVIDED, That any period of additional service imposed by law, from which one is unable to obtain orders relieving him or her from active duty, will not affect ((his)) reemployment rights.~~

(f) The applicant must return and reenter the office or position within the appropriate period specified in (c) of this subsection after serving twelve weeks or less in a calendar year in state-ordered active duty: PROVIDED, That the governor, when declaring an emergency that necessitates a longer period of service, may extend the period of service in state-ordered active duty to up to twelve months after which the applicant is eligible for the benefits of this chapter.

(2) The failure of an applicant to provide documentation that satisfies rules adopted pursuant to subsection (1)(c) of this section shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs

because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that the applicant does not meet one or more of the requirements referred to in subsection (1)(d) of this section, that applicant's employer may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(3) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(4) The application in subsection (1) of this section is not required if the giving of such application is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made by the adjutant general of the state of Washington military department and is not subject to judicial review.

(5) In any proceeding involving an issue of whether (a) reemployment is impossible or unreasonable because of a change in an employer's circumstances, (b) reemployment would impose an undue hardship on the employer, or (c) the employment is for a temporary position, the employer has the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

Sec. 7. RCW 73.16.051 and 1953 c 212 s 5 are each amended to read as follows:

Any person who is entitled to be restored to a position in accordance with ~~((the provisions of RCW 73.16.031, 73.16.033, 73.16.035, and 73.16.041))~~ this chapter shall be considered as having been on furlough or leave of absence, from his or her position of employment, during his or her period of active military duty or service, and he or she shall be so restored without loss of seniority. He or she shall further be entitled to participate in insurance, vacations, retirement pay, and other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into the service; and he or she shall not be discharged from such position without cause within one year after restoration(~~(- PROVIDED, That no employer shall be required to make any payment to keep insurance or retirement rights current during such period of military service))~~).

NEW SECTION. Sec. 8. A new section is added to chapter 73.16 RCW to read as follows:

(1) If a person, or the person's dependents, have coverage under a health plan in connection with the person's position of state employment, and the person is absent from his or her position of state employment by reason of service in the uniformed services, the plan shall provide that the person may elect to continue the

coverage as provided in this section. The maximum period of coverage of a person and person's dependents under such an election shall be the lesser of:

(a) The eighteen-month period beginning on the date on which the person's absence begins; or

(b) The day after the date on which the person fails to apply for or return to a position of state employment, as determined under RCW 73.16.035.

(2) A person who elects to continue health plan coverage under this section may be required to pay not more than one hundred two percent of the full premium under the plan associated with the coverage for the state employer's other employees, except that in the case of a person who performs service in the uniformed services for less than thirty-one days, the person may not be required to pay more than the employee share, if any, for the coverage.

(3) Except as provided in subsection (2) of this section, if a person's coverage under a health plan was terminated because of service in the uniformed services, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of the person by the plan not been terminated as a result of his or her service. This subsection applies to the person who is reemployed and to any dependent who is covered by the plan because of the reinstatement of the coverage of the person.

NEW SECTION. Sec. 9. A new section is added to chapter 73.16 RCW to read as follows:

(1)(a) In the case of a right provided under any state law governing pension benefits for state employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(b) A person reemployed under this chapter shall be treated as not having incurred a break in service with the state because of the person's period of service in the uniformed services.

(c) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the state for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(2) When the state is reemploying a person under this chapter, the state is liable to an employee pension benefit plan for funding any obligation of the plan to provide the pension benefits described in this section and shall allocate the amounts of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and purposes of a state law governing pension benefits for state employees, service in the uniformed services that is deemed under subsection (1) of this section to be service with the state shall be deemed to be

service with the state under the terms of the plan or any applicable collective bargaining agreement.

(3) A person reemployed by the state under this chapter is entitled to accrued benefits pursuant to subsection (1)(a) of this section that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the internal revenue code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the state throughout the period of ununiformed service. Any payment to the plan described in this subsection shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's services, such payment period in the ununiformed services, not to exceed five years.

(4) For purposes of computing an employer's liability of the employee's contributions under subsection (2) of this section, the employee's compensation during the period of service shall be computed:

(a) At the rate the employee would have received but for the period of service in subsection (1)(b) of this section; or

(b) In the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve-month period immediately preceding such period or if shorter, the period of employment immediately preceding such period.

Sec. 10. RCW 73.16.061 and 1953 c 212 s 6 are each amended to read as follows:

(1) In case any employer, his or her successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061 and sections 4, 8, 9, and 13 of this act, the ((prosecuting attorney of the county in which the employer is located)) attorney general shall bring action in the superior court in the county in which the employer is located or does business to obtain an order to specifically require such employer to comply with the provisions ((hereof)) of this chapter, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act if:

(a) The service in question was state duty not covered by the ununiformed services employment and reemployment rights act of 1994, P.L. 103-353 (38 U.S.C. Sec. 4301 et seq.); and

(b) The employer support for guard and reserve ombudsman, or his or her designee, has inquired in the matter and has been unable to resolve it.

(2) If the conditions in subsection (1)(a) and (b) of this section are met, any such person who does not desire the services of the ((prosecuting)) attorney general may, by private counsel, bring such action.

Sec. 11. RCW 73.16.070 and 1941 c 201 s 5 are each amended to read as follows:

The federal soldiers' and sailors' civil relief act of 1940, Public Act No. 861 (76th congress), is hereby specifically declared to apply in proper cases in all the courts of this state.

NEW SECTION. Sec. 12. A new section is added to chapter 73.16 RCW to read as follows:

An offset of any military pay for temporary service in the uniformed services in a particular week against the salary of a bona fide executive, administrative, or professional employee in a particular week shall not be a factor in determining whether the employee is exempt under RCW 49.46.010(5)(c).

NEW SECTION. Sec. 13. A new section is added to chapter 73.16 RCW to read as follows:

This chapter shall not supersede, nullify, or diminish any federal or state law, ordinance, rule, regulation, contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

NEW SECTION. Sec. 14. A new section is added to chapter 73.16 RCW to read as follows:

The legislature declares that the public policies articulated in chapter ..., Laws of 2001 (this act) depend on the procedures established in chapter ..., Laws of 2001 (this act). No civil or criminal action may be maintained relying on the public policies articulated in chapter ..., Laws of 2001 (this act) without complying with the procedures in this chapter. To that end, all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this chapter.

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

Passed the Senate April 16, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 134

[Substitute House Bill 1004]

DISABILITY PAYMENTS—ADJUSTMENTS

AN ACT Relating to adjusting disability payments; amending RCW 41.24.150; reenacting and amending RCW 41.24.160; and declaring an emergency.

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

Sec. 1. RCW 41.24.150 and 1999 c 148 s 13 are each amended to read as follows:

(1)(a) Whenever a 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 (i) equal to his or her monthly wage as certified by the local board or (ii) 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 provided. However, if the 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.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amounts specified in (a)(ii) of this subsection shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) 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.

(3) Where a participant sustains a permanent partial disability the state board may provide that the injured 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. 2. RCW 41.24.160 and 1999 c 148 s 14 and 1999 c 117 s 5 are each reenacted and amended to read as follows:

(1)(a) Whenever a 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 (i) 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 (ii)(A) 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, (B) to a maximum total of two thousand five hundred fifty dollars per month.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amount specified in (a)(ii)(B) of this subsection shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased participant or if, after the death of the 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 one thousand two hundred seventy-five dollars per month shall be paid for the youngest or only child together with an additional one hundred ten dollars per month for each additional of such children to a maximum of two thousand 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 one thousand two hundred 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 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 under this subsection the amount and value of the lump sum payment may be agreed upon between the applicant and the state board.

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, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 135

[House Bill 1035]

STEELHEAD RECOVERY PROGRAM

AN ACT Relating to the management board created to implement the habitat portion of the lower Columbia steelhead conservation initiative; amending RCW 77.85.200; amending 1998 c 60 s 1 (uncodified); and providing an effective date.

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

Sec. 1. RCW 77.85.200 and 2000 c 107 s 121 are each amended to read as follows:

(1) A ((pilot)) program for steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat area classified as evolutionarily significant unit 4 by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for implementing the habitat portion of the approved steelhead recovery initiative and is empowered to receive and disburse funds for the approved steelhead recovery initiative. The management board created pursuant to this section shall constitute the lead entity and the committee established under RCW 77.85.050 responsible for fulfilling the requirements and exercising powers under this chapter.

(2) A management board consisting of fifteen voting members is created within evolutionarily significant unit 4. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within evolutionarily significant unit 4 as a voting member selected by the cities in evolutionarily significant unit 4; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within evolutionarily significant unit 4 selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or designees; and one representative nominated from the environmental community who resides in evolutionarily significant unit 4 appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties. Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any noncontractual acts or omissions in carrying out the purposes of this section.

(3)(a) The management board shall participate in the development of a recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activities as well as habitat conservation plans in the implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for implementing the habitat portions of the local government responsibilities of the lower Columbia steelhead conservation initiative approved by the state and the national marine fisheries service. The management board may work in cooperation with the state and the national marine fisheries service to modify the initiative, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in steelhead recovery. The management board may consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each prioritized stream as listed in the lower Columbia steelhead conservation initiative. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a quarterly basis to the legislative bodies of the five participating counties and the state natural resource-related agencies. The management board shall prepare a final report at the conclusion of the ((pilot)) program describing its efforts and successes in implementing the habitat portion of the lower Columbia steelhead conservation initiative. The final report shall be transmitted to the appropriate committees of the legislature, the legislative bodies of the participating counties, and the state natural resource-related agencies.

(5) The ((pilot)) program terminates on July 1, ((2002)) 2006.

(6) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

Sec. 2. 1998 c 60 s 1 (uncodified) is amended to read as follows:

The legislature recognizes the need to address listings that are made under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) in a way that will make the most efficient use of existing efforts. The legislature finds that the principle of adaptive management requires that different models should be tried so that the lessons learned from these models can be put to use throughout the state. It is the intent of the legislature to create a ((pilot)) program for southwestern Washington to address the recent steelhead listings and which takes full advantage of all state and local efforts at habitat restoration in that area to date.

NEW SECTION. Sec. 3. This act takes effect August 1, 2001.

Passed the House February 22, 2001.
 Passed the Senate April 11, 2001.
 Approved by the Governor May 2, 2001.
 Filed in Office of Secretary of State May 2, 2001.

CHAPTER 136

[House Bill 1040]

CRIME VICTIMS' BENEFITS—HIT AND RUN ASSAULTS

AN ACT Relating to authorizing crime victims' compensation benefits in hit-and-run vehicular assault cases; and amending RCW 7.68.020.

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

Sec. 1. RCW 7.68.020 and 1997 c 249 s 1 are each amended to read as follows:

The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Department" means the department of labor and industries.

(2) "Criminal act" means an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this state, or an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state; and the crime occurred in a state which does not have a crime victims compensation program, for which the victim is eligible as set forth in the Washington compensation law, or an act of terrorism as defined in 18 U.S.C. Sec. 2331, as it exists on May 2, 1997, committed outside of the United States against a resident of the state of Washington, except as follows:

(a) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless:

(i) The injury or death was intentionally inflicted;

(ii) The operation thereof was part of the commission of another non-vehicular criminal act as defined in this section;

(iii) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained: **PROVIDED**, That in cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits; or

(iv) The injury or death was caused by a driver in violation of RCW 46.61.502;

(b) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in subsection (2)(a)(iii) of this section;

(c) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(d) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(3) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "workman" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

(5) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(6) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(7) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

Passed the House February 20, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 2, 2001.

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CHAPTER 137

[House Bill 1070]

JUVENILE OFFENDER BASIC TRAINING CAMP

AN ACT Relating to the juvenile offender basic training camp program; and amending RCW 13.40.320, 13.40.210, and 74.15.020.

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

Sec. 1. RCW 13.40.320 and 1997 c 338 s 38 are each amended to read as follows:

(1) The department of social and health services shall establish ~~((and operate))~~ a medium security juvenile offender basic training camp program. ~~((The department shall site a juvenile offender basic training camp facility in the most cost-effective facility possible and shall review the possibility of using an existing abandoned and/or available state, federally, or military-owned site or facility:))~~ This program for juvenile offenders serving a term of confinement under the supervision of the department is exempt from the licensing requirements of chapter 74.15 RCW.

(2) The department may contract under this chapter with private companies, the national guard, or other federal, state, or local agencies to operate the juvenile offender basic training camp, notwithstanding the provisions of RCW 41.06.380. ~~((Requests for proposals from possible contractors shall not call for payment on a per diem basis:))~~

(3) ~~((The juvenile offender basic training camp shall accommodate at least seventy offenders. The beds shall count as additions to, and not be used as replacements for, existing bed capacity at existing department of social and health services juvenile facilities.~~

~~((4))~~ (4) The juvenile offender basic training camp shall be a structured and regimented model ~~((lasting one hundred twenty days))~~ emphasizing the building up of an offender's self-esteem, confidence, and discipline. The juvenile offender basic training camp program shall provide participants with basic education, prevocational training, work-based learning, ~~((five))~~ work experience, work ethic skills, conflict resolution counseling, substance abuse intervention, anger management counseling, and structured intensive physical training. The juvenile offender basic training camp program shall have a curriculum training and work schedule that incorporates a balanced assignment of these or other rehabilitation and training components for no less than sixteen hours per day, six days a week.

The department shall ~~((adopt rules))~~ develop standards for the safe and effective operation of the juvenile offender basic training camp program, ~~((standards))~~ for an offender's successful program completion, and ~~((rates))~~ for the continued after-care supervision of offenders who have successfully completed the program.

~~((5))~~ (4) Offenders eligible for the juvenile offender basic training camp option shall be those with a disposition of not more than sixty-five weeks. Violent and sex offenders shall not be eligible for the juvenile offender basic training camp program.

~~((6))~~ (5) If the court determines that the offender is eligible for the juvenile offender basic training camp option, the court may recommend that the department place the offender in the program. The department shall evaluate the offender and may place the offender in the program. The evaluation shall include, at a minimum, a risk assessment developed by the department and designed to determine the offender's suitability for the program. No juvenile who is assessed as a high risk offender or suffers from any mental or physical problems that could

endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the juvenile offender basic training camp program.

~~((7))~~ (6) All juvenile offenders eligible for the juvenile offender basic training camp sentencing option shall spend one hundred twenty days of their disposition in a juvenile offender basic training camp. This period may be extended for up to forty days by the secretary if a juvenile offender requires additional time to successfully complete the basic training camp program. If the juvenile offender's activities while in the juvenile offender basic training camp are so disruptive to the juvenile offender basic training camp program, as determined by the secretary according to ~~((rules adopted))~~ standards developed by the department, as to result in the removal of the juvenile offender from the juvenile offender basic training camp program, or if the offender cannot complete the juvenile offender basic training camp program due to medical problems, the secretary shall require that the offender be committed to a juvenile institution to serve the entire remainder of his or her disposition, less the amount of time already served in the juvenile offender basic training camp program.

~~((8))~~ (7) All offenders who successfully graduate from the ~~((one hundred twenty day))~~ juvenile offender basic training camp program shall spend the remainder of their disposition on parole in a ~~((division of))~~ juvenile rehabilitation administration intensive aftercare program in the local community. Violation of the conditions of parole is subject to sanctions specified in RCW 13.40.210(4). The program shall provide for the needs of the offender based on his or her progress in the aftercare program as indicated by ongoing assessment of those needs and progress. The intensive aftercare program shall monitor postprogram juvenile offenders and assist them to successfully reintegrate into the community. In addition, the program shall develop a process for closely monitoring and assessing public safety risks. The intensive aftercare program shall be designed and funded by the department of social and health services.

~~((9))~~ (8) The department shall also develop and maintain a data base to measure recidivism rates specific to this incarceration program. The data base shall maintain data on all juvenile offenders who complete the juvenile offender basic training camp program for a period of two years after they have completed the program. The data base shall also maintain data on the criminal activity, educational progress, and employment activities of all juvenile offenders who participated in the program.

Sec. 2. RCW 13.40.210 and 1997 c 338 s 32 are each amended to read as follows:

(1) The secretary shall, except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030, set a release or discharge date for each juvenile committed to its custody. The release or discharge date shall be within the

prescribed range to which a juvenile has been committed except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the juvenile's release under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community service. Community service for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community service may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under

supervision; ~~((and))~~ (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section.

Sec. 3. RCW 74.15.020 and 1999 c 267 s 11 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) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(q) 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.

Passed the House March 9, 2001.
Passed the Senate April 9, 2001.
Approved by the Governor May 2, 2001.
Filed in Office of Secretary of State May 2, 2001.

CHAPTER 138

[Substitute House Bill 1133]

INDUSTRIAL INSURANCE—DONATED LABOR

AN ACT Relating to limiting liability for donated labor on community projects; amending RCW 51.12.050 and 51.12.035; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that government and business partnerships on projects for community improvement can assist communities to preserve historic property and create opportunities for volunteer service. The legislature also recognizes that uncertainty about risks and obligations may deter employers who would otherwise be willing to donate materials and equipment to a community project. The purpose of this act is to encourage participation by establishing clear criteria for determining industrial insurance obligations with respect to donated labor on certain community projects.

Sec. 2. RCW 51.12.050 and 1977 ex.s. c 350 s 18 are each amended to read as follows:

(1) ~~Whenever ((the state, county, any municipal corporation, or other taxing district shall)) a public entity engages in any work, or let a contract therefor, in which workers are employed for wages, this title shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the ((state, county, municipality, or other taxing district)) public entity. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than one year in performance, the required payment into the accident fund shall be based upon the total payroll. The contractor and any subcontractor shall be subject to the provisions of this title, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his or her proportionate amount of the payment.~~

(2)(a) A public entity may seek partnerships with volunteer groups and businesses to engage in community improvement projects to benefit the public entity. In administering a project, the public entity must:

(i) Provide prospective donors and participants written notice of the risks and responsibilities to be assumed by the public entity and the donors or participants. A volunteer donating labor on the project must, before beginning work, document

in writing that he or she has received the notice and that he or she is donating labor as a result of his or her own free choice; and

(ii) Pay premiums and assessments required under this title to secure medical aid benefits under chapter 51.36 RCW for volunteers donating labor on the project.

(b) A contractor or employer donating equipment or materials for use on a community improvement project shall not, for the purposes of this title, be considered the employer of an individual donating labor unless the contractor or employer pays the individual wages for working on the project or makes working on the project a condition of employment. This subsection applies regardless of whether:

(i) The contractor or employer informs the individual about the community improvement project or encourages the individual to donate labor on the project;

(ii) The individual uses equipment or materials on the project that are donated by the contractor or the individual's employer; or

(iii) The individual is granted maintenance or reimbursement for actual expenses necessarily incurred in performing labor for the project.

(3) Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be entitled to the benefits of this title and shall not be included in the payroll of the municipality under this title: PROVIDED, That whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his or her actual wages and that received under this title such employees shall be entitled to the benefits of this title and may be included in the payroll of the municipality.

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

(a) "Community improvement project" means a project sponsored by a public entity that uses donated labor, materials, or equipment and includes, but is not limited to, projects to repair, restore, or preserve historic property.

(b) "Historic property" means real property owned by a public entity including, but not limited to, barns, schools, military structures, and cemeteries.

(c) "Public entity" means the state, county, any municipal corporation, or other taxing district.

Sec. 3. RCW 51.12.035 and 1981 c 266 s 3 are each amended to read as follows:

(1) Volunteers shall be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW.

A "volunteer" shall mean a person who performs any assigned or authorized duties for the state or any agency thereof, except emergency services workers as described by chapter 38.52 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by the state or any agency thereof, prior to the occurrence of the injury or the contraction of an occupational disease, for the purpose of engaging in authorized volunteer service: PROVIDED,

That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties.

Any and all premiums or assessments due under this title on account of such volunteer service shall be the obligation of and be paid by the state or any agency thereof which has registered and accepted the services of volunteers.

(2) Except as provided in RCW 51.12.050, volunteers may be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW at the option of any city, county, town, special district, municipal corporation, or political subdivision of any type, or any private nonprofit charitable organization, when any such unit of local government or any such nonprofit organization has given notice of covering all of its volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

A "volunteer" shall mean a person who performs any assigned or authorized duties for any such unit of local government, or any such organization, except emergency services workers as described by chapter 38.52 RCW, or fire fighters covered by chapter 41.24 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by any such unit of local government, or any such organization which has given such notice, for the purpose of engaging in authorized volunteer services: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties: PROVIDED FURTHER, That juveniles performing community services under chapter 13.40 RCW may not be granted coverage as volunteers under this section.

Any and all premiums or assessments due under this title on account of such volunteer service for any such unit of local government, or any such organization shall be the obligation of and be paid by such organization which has registered and accepted the services of volunteers and exercised its option to secure the medical aid benefits under chapter 51.36 RCW for such volunteers.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 139

[Substitute House Bill 1163]

JUNK VEHICLES—DISPOSAL

AN ACT Relating to disposal of garbage and junk vehicles; and amending RCW 70.93.060, 70.95.240, and 46.55.230.

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

Sec. 1. RCW 70.93.060 and 2000 c 154 s 2 are each amended to read as follows:

(1) It is a violation of this section to abandon a junk vehicle upon any property ~~((located in an unincorporated area of a county))~~. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of ~~((said))~~ the private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

~~(b) ((It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot in an incorporated area of a county. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.~~

~~—(c))~~ It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard ~~((in an unincorporated area of a county))~~. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

~~(((d)))~~ (d) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more ~~((in an unincorporated area of a county))~~. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The

court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

~~((e))~~ (d) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community service in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, a cigarette, cigar, or other tobacco product that is capable of starting a fire.

Sec. 2. RCW 70.95.240 and 2000 c 154 s 3 are each amended to read as follows:

(1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit. This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

~~(b) ((It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot in an unincorporated area of a county. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.~~

—(c)) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard (~~(in an unincorporated area of a county)~~). The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

~~((d))~~ (c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more (~~(in an unincorporated area of a county)~~). The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

~~((e))~~ (d) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

Sec. 3. RCW 46.55.230 and 2000 c 154 s 4 are each amended to read as follows:

(1) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or officer of a jurisdictional health department acting pursuant to RCW 70.95.240, or any person authorized by the director shall inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the scrap in it.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to arrange for the removal of the vehicle.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.

~~(6)((a) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to abandon a junk vehicle on property located in an incorporated area. If a junk vehicle is abandoned in an incorporated area, the landowner of the property upon which the junk vehicle is located is entitled to recover from the vehicle's registered owner any costs incurred in the removal of the junk vehicle.~~

~~—(b)) It is a gross misdemeanor for a person to abandon a junk vehicle on property ((located in an unincorporated area)). If a junk vehicle is abandoned ((in an unincorporated area)), the vehicle's registered owner shall also pay a cleanup restitution payment equal to twice the costs incurred in the removal of the junk vehicle. The court shall distribute one-half of the restitution payment to the landowner of the property upon which the junk vehicle is located, and one-half of the restitution payment to the law enforcement agency or jurisdictional health department investigating the incident.~~

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance.

Passed the House February 27, 2001.

Passed the Senate May 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 140

[Substitute House Bill 1174]

MISDEMEANOR OFFENSES—VACATING RECORDS

AN ACT Relating to vacation of records of conviction for misdemeanor and gross misdemeanor offenses; and adding a new section to chapter 9.96 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.96 RCW to read as follows:

(1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the

applicant's record of conviction for the offense. If the court finds the applicant meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present: (a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense; (c) the offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), or 9.91.020 (operating a railroad, etc. while intoxicated); (d) the offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses); (e) the applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family member or household member against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

(i) The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;

(ii) The applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

(iii) The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or

(iv) Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing; (f) for any offense other than those described in (e) of this subsection, less than three years have passed since the person completed the terms of the sentence, including any financial obligations; (g) the offender has been convicted of a new crime in this

state, another state, or federal court since the date of conviction; (h) the applicant has ever had the record of another conviction vacated; or (i) the applicant is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under subsection (1) of this section may state that he or she has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(4) All costs incurred by the court and probation services shall be paid by the person making the motion to vacate the record unless a determination is made pursuant to chapter 10.101 RCW that the person making the motion is indigent, at the time the motion is brought.

(5) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

Passed the House March 13, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 141

[House Bill 1198]

DRINKING WATER ASSISTANCE ACCOUNTS

AN ACT Relating to naming drinking water assistance subaccounts to place them in interest-bearing accounts; amending RCW 43.84.092, 43.84.092, and 70.119A.170; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund

the Washington state drinking water loan program as part of the federal safe drinking water act.

Sec. 2. RCW 43.84.092 and 2000 2nd sp.s. c 4 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 drinking water assistance administrative account, the drinking water assistance repayment 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 state higher education construction account, the higher education construction 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 multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system plan 2 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 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement 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' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, 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 county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account,

the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement 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 2000 2nd sp.s. c 4 s 6 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 drinking water assistance administrative account, the drinking water assistance repayment 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 state higher education construction account, the higher education construction 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 multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 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 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement 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' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, 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 county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement 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 70.119A.170 and 1997 c 218 s 4 are each amended to read as follows:

(1) A drinking water assistance account is created in the state treasury. Such subaccounts as are necessary to carry out the purposes of this chapter are permitted to be established within the account. Therefore, the drinking water assistance administrative account and the drinking water assistance repayment account are created in the state treasury. The purpose of the account is to allow the state to use any federal funds that become available to states from congress to fund a state revolving loan fund program as part of the reauthorization of the federal safe drinking water act. Expenditures from the account may only be made by the secretary, the public works board, or the department of community, trade, and economic development, after appropriation. Moneys in the account may only be used, consistent with federal law, to assist water systems to provide safe drinking water through a program administered through the department of health, the public works board, and the department of community, trade, and economic development and for other activities authorized under federal law. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. All interest earned on moneys deposited in the account, including repayments, shall remain in the account and may be used for any eligible purpose. Moneys in the account may only be used to assist local governments and

water systems to provide safe and reliable drinking water, for other services and assistance authorized by federal law to be funded from these federal funds, and to administer the program.

(2) The department and the public works board shall establish and maintain a program to use the moneys in the drinking water assistance account as provided by the federal government under the safe drinking water act. The department and the public works board, in consultation with purveyors, local governments, local health jurisdictions, financial institutions, commercial construction interests, other state agencies, and other affected and interested parties, shall by January 1, 1999, adopt final joint rules and requirements for the provision of financial assistance to public water systems as authorized under federal law. Prior to the effective date of the final rules, the department and the public works board may establish and utilize guidelines for the sole purpose of ensuring the timely procurement of financial assistance from the federal government under the safe drinking water act, but such guidelines shall be converted to rules by January 1, 1999. The department and the public works board shall make every reasonable effort to ensure the state's receipt and disbursement of federal funds to eligible public water systems as quickly as possible after the federal government has made them available. By December 15, 1997, the department and the public works board shall provide a report to the appropriate committees of the legislature reflecting the input from the affected interests and parties on the status of the program. The report shall include significant issues and concerns, the status of rule making and guidelines, and a plan for the adoption of final rules.

(3) If the department, public works board, or any other department, agency, board, or commission of state government participates in providing service under this section, the administering entity shall endeavor to provide cost-effective and timely services. Mechanisms to provide cost-effective and timely services include: (a) Adopting federal guidelines by reference into administrative rules; (b) using existing management mechanisms rather than creating new administrative structures; (c) investigating the use of service contracts, either with other governmental entities or with nongovernmental service providers; (d) the use of joint or combined financial assistance applications; and (e) any other method or practice designed to streamline and expedite the delivery of services and financial assistance.

(4) The department shall have the authority to establish assistance priorities and carry out oversight and related activities, other than financial administration, with respect to assistance provided with federal funds. The department, the public works board, and the department of community, trade, and economic development shall jointly develop, with the assistance of water purveyors and other affected and interested parties, a memorandum of understanding setting forth responsibilities and duties for each of the parties. The memorandum of understanding at a minimum, shall include:

(a) Responsibility for developing guidelines for providing assistance to public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems;

(b) Department submittal of preapplication information to the public works board for review and comment;

(c) Department submittal of a prioritized list of projects to the public works board for determination of:

(i) Financial capability of the applicant; and

(ii) Readiness to proceed, or the ability of the applicant to promptly commence the project;

(d) A process for determining consistency with existing water resource planning and management, including coordinated water supply plans, regional water resource plans, and comprehensive plans under the growth management act, chapter 36.70A RCW;

(e) A determination of:

(i) Least-cost solutions, including consolidation and restructuring of small systems, where appropriate, into more economical units;

(ii) The provision of regional facilities;

(iii) Projects and activities that facilitate compliance with the federal safe drinking water act; and

(iv) Projects and activities that are intended to achieve the public health objectives of federal and state drinking water laws;

(f) Implementation of water conservation and other demand management measures consistent with state guidelines for water utilities;

(g) Assistance for the necessary planning and engineering to assure that consistency, coordination, and proper professional review are incorporated into projects or activities proposed for funding;

(h) Minimum standards for water system capacity, financial viability, and water system planning;

(i) Testing and evaluation of the water quality of the state's public water system to assure that priority for financial assistance is provided to systems and areas with threats to public health from contaminated supplies and reduce in appropriate cases the substantial increases in costs and rates that customers of small systems would otherwise incur under the monitoring and testing requirements of the federal safe drinking water act;

(j) Coordination, to the maximum extent possible, with other state programs that provide financial assistance to public water systems and state programs that address existing or potential water quality or drinking contamination problems;

(k) Definitions of "affordability" and "disadvantaged community" that are consistent with these and similar terms in use by other state or federal assistance programs;

(l) Criteria for the financial assistance program for public water systems, which shall include, but are not limited to:

- (i) Determining projects addressing the most serious risk to human health;
- (ii) Determining the capacity of the system to effectively manage its resources, including meeting state financial viability criteria; and
- (iii) Determining the relative benefit to the community served; and
- (m) Ensure that each agency fulfills the audit, accounting, and reporting requirements under federal law for its portion of the administration of this program.

(5) The department and the public works board shall begin the process to disburse funds no later than October 1, 1997, and shall adopt such rules as are necessary under chapter 34.05 RCW to administer the program by January 1, 1999.

NEW SECTION. Sec. 5. Section 2 of this act expires March 1, 2002.

NEW SECTION. Sec. 6. Section 3 of this act takes effect March 1, 2002.

Passed the House March 13, 2001.
 Passed the Senate April 9, 2001.
 Approved by the Governor May 2, 2001.
 Filed in Office of Secretary of State May 2, 2001.

CHAPTER 142

[House Bill 1243]

ALCOHOL OR DRUG TESTS—EVIDENCE

AN ACT Relating to the admissibility into evidence of a refusal to submit to a test of alcohol or drug concentration; and amending RCW 46.61.517.

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

Sec. 1. RCW 46.61.517 and 1987 c 373 s 5 are each amended to read as follows:

The refusal of a person to submit to a test of the ~~((alcoholic content of))~~ **alcohol or drug concentration in** the person's blood or breath under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial.

Passed the House March 13, 2001.
 Passed the Senate April 10, 2001.
 Approved by the Governor May 2, 2001.
 Filed in Office of Secretary of State May 2, 2001.

CHAPTER 143

[House Bill 1257]

EDUCATIONAL SERVICE DISTRICTS—BORROWING AUTHORITY

AN ACT Relating to educational service districts' authority to borrow; and amending RCW 28A.310.200.

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

Sec. 1. RCW 28A.310.200 and 1993 c 298 s 1 are each amended to read as follows:

In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Approve the budgets of the educational service district in accordance with the procedures provided for in this chapter.

(2) Meet regularly according to the schedule adopted at the organization meeting and in special session upon the call of the chair or a majority of the board.

(3) Approve the selection of educational service district personnel and clerical staff as provided in RCW 28A.310.230.

(4) Fix the amount of and approve the bonds for those educational service district employees designated by the board as being in need of bonding.

(5) Keep in the educational service district office a full and correct transcript of the boundaries of each school district within the educational service district.

(6) Acquire by borrowing funds or by purchase, lease, devise, bequest, and gift and otherwise contract for real and personal property necessary for the operation of the educational service district and to the execution of the duties of the board and superintendent thereof and sell, lease, or otherwise dispose of that property not necessary for district purposes. No real property shall be acquired or alienated without the prior approval of the state board of education and the acquisition or alienation of all such property shall be subject to such provisions as the board may establish. When borrowing funds for the purpose of acquiring property, the educational service district board shall pledge as collateral the property to be acquired. Borrowing shall be evidenced by a note or other instrument between the district and the lender. ~~((The authority to borrow under this subsection shall be limited to educational service districts serving a minimum of two hundred thousand students in grades kindergarten through twelve.))~~

(7) Under RCW 28A.310.010, upon the written request of the board of directors of a local school district or districts served by the educational service district, the educational service district board of directors may provide cooperative and informational services not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that support the education of preschool through twelfth grade students in the public schools or that support the effective, efficient, or safe management and operation of the school district or districts served by the educational service district.

(8) Adopt such bylaws and rules and regulations for its own operation as it deems necessary or appropriate.

(9) Enter into contracts, including contracts with common and educational service districts and the school for the deaf and the school for the blind for the joint financing of cooperative service programs conducted pursuant to RCW 28A.310.180(3), and employ consultants and legal counsel relating to any of the duties, functions, and powers of the educational service districts.

Passed the House March 9, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor May 2, 2001.
Filed in Office of Secretary of State May 2, 2001.

CHAPTER 144

[House Bill 1346]

FOREIGN CHILDREN—MEDICAL CARE

AN ACT Relating to foreign children entering the United States for medical care; and amending RCW 74.15.020.

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

Sec. 1. RCW 74.15.020 and 1999 c 267 s 11 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) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;~~

~~(g)~~ 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))~~ (h) 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))~~ (i) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

~~((i))~~ (j) 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))~~ (k) Licensed physicians or lawyers;

~~((k))~~ (l) 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))~~ (m) Facilities approved and certified under chapter 71A.22 RCW;

~~((m))~~ (n) 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))~~ (o) 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;

~~((p))~~ (p) 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;

~~((q))~~ (q) 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.

Passed the House March 9, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 145

[Substitute House Bill 1649]

HIT AND RUN ACCIDENTS—DECEASED PERSONS

AN ACT Relating to hit and run causing injury to the body of a deceased person; amending RCW 46.52.020; and prescribing penalties.

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

Sec. 1. RCW 46.52.020 and 2000 c 66 s 1 are each amended to read as follows:

(1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person or involving striking the body of a deceased person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(2) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person, or involving striking the body of a deceased person, or resulting in damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4)(a) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in death is guilty of a class B felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(b) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this

section in the case of an accident resulting in injury is guilty of a class C felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(c) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident involving striking the body of a deceased person is guilty of a gross misdemeanor.

(d) This subsection shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying with this section.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or permit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section.

Passed the House March 12, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 146

[Substitute House Bill 1793]

COURT FILING FEES

AN ACT Relating to court filing fees; amending RCW 36.18.012, 36.18.016, 36.18.025, 40.14.027, 41.50.136, 46.87.370, 50.20.190, 50.24.115, 51.24.060, 51.48.140, 82.32.210, 82.36.047, and 82.38.235; and reenacting and amending RCW 51.32.240.

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

Sec. 1. RCW 36.18.012 and 1999 c 42 s 634 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))~~ (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))~~ (4) 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))~~ (5) 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))~~ (6) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

~~((8))~~ (7) A fee of two dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96A.220.

~~((9))~~ (8) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

~~((10))~~ (9) For certification of delinquent taxes by a county treasurer under RCW 84.64.190, a fee of five dollars must be charged.

(10) For the filing of a tax warrant for unpaid taxes or overpayment of benefits by any agency of the state of Washington, a fee of five dollars on or after the effective date of this act, and for the filing of such a tax warrant or overpayment of benefits on or after July 1, 2003, a fee of twenty dollars, of which forty-six percent of the first five dollars is directed to the public safety and education account established under RCW 43.08.250.

Sec. 2. RCW 36.18.016 and 2000 c 170 s 1 are each amended to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, a fee of twenty dollars must be paid.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve,

an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of fifty dollars for a jury of six, or one hundred dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing, transcribing, or certifying an instrument on file or of record in the clerk's office, with or without seal, for the first page or portion of the first page, a fee of two dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of one dollar for each additional seal affixed must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(8) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(9) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(10) For clerk's ((special)) services such as processing ex parte orders ((by mail)), performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(11) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape.

(12) For the filing of oaths and affirmations under chapter 5.28 RCW, a fee of twenty dollars must be charged.

(13) For filing a disclaimer of interest under RCW 11.86.031(4), a fee of two dollars must be charged.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of five dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of one hundred ten dollars must be charged.

(16) A facilitator surcharge of ten dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) ~~((For filing a warrant for overpayment of state retirement systems benefits under chapter 41.50 RCW, a fee of five dollars shall be charged pursuant to RCW 41.50.136.~~

—~~(19))~~) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

~~((20))~~) (19) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

~~((21))~~) (20) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

~~((22))~~) (21) Investment service charge and earnings under RCW 36.48.090 must be charged.

~~((23))~~) (22) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

~~((24))~~) (23) For filing a request for mandatory arbitration, a fee may be assessed against the party filing a statement of arbitrability not to exceed one hundred twenty dollars as established by authority of local ordinance and approved by a vote of the people if it is determined by a court of competent jurisdiction that such a vote is required by chapter 1, Laws of 2000 (Initiative Measure No. 695). This charge shall be used solely to offset the cost of the mandatory arbitration program.

~~((23))~~) (24) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

Sec. 3. RCW 36.18.025 and 1992 c 54 s 2 are each amended to read as follows:

Forty-six percent of the money received from filing fees paid pursuant to RCW 36.18.020, except those collected for the filing of warrants for unpaid taxes or overpayments by state agencies as outlined in RCW 36.18.012(10), shall be transmitted by the county treasurer each month to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

Sec. 4. RCW 40.14.027 and 1996 c 245 s 4 are each amended to read as follows:

State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012~~((3))~~) (10). The surcharge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account.

Surcharge revenue deposited in the archives and records management account shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program.

Sec. 5. RCW 41.50.136 and 1996 c 56 s 2 are each amended to read as follows:

Whenever a notice of determination of liability becomes conclusive and final under RCW 41.50.135, the director, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee ~~((of five dollars payable))~~ under RCW ~~((36.18.016))~~ 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A copy of the warrant shall be mailed to the person mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

Sec. 6. RCW 46.87.370 and 1987 c 244 s 50 are each amended to read as follows:

Whenever any assessment has become final in accordance with this chapter, the department may file with the clerk of any county within this state a warrant in the amount of fees, taxes, penalties, interest, and a filing fee ~~((of five dollars))~~ under RCW 36.18.012(10). The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the delinquent owner of proportionally registered vehicles mentioned in the warrant, the amount of the fees, taxes, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed constitutes a lien upon the title to, and interest in, all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. A warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee ~~((of five dollars))~~ under RCW 36.18.012(10), which shall be added to the amount of the warrant.

Sec. 7. RCW 50.20.190 and 1995 c 90 s 1 are each amended to read as follows:

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be

liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that ~~((said))~~ the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, ~~((said))~~ the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee ~~((of five dollars))~~ under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s)

against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an

assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of their monthly payments either partially or in full. The interest penalty shall be used to fund detection and recovery of overpayment and collection activities.

Sec. 8. RCW 50.24.115 and 1983 1st ex.s. c 23 s 16 are each amended to read as follows:

Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee ~~((of five dollars))~~ under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee ~~((of five dollars))~~ under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his last known address within five days of filing with the clerk.

Sec. 9. RCW 51.24.060 and 1995 c 199 s 4 are each amended to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien 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 such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary 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 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))~~ under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has 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 which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by certified mail, return receipt requested; or by any authorized representatives of the director. 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 of 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 which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative 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 claimed by the director in the notice together with costs. 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 to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

Sec. 10. RCW 51.32.240 and 1999 c 396 s 1 and 1999 c 119 s 1 are each reenacted and 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 or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient fraud, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) 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.

(4) 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.

(5) 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 three years of the discovery of the fraud.

(6) 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 (5) 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))~~ under RCW 36.18.012(10), 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.

(7) 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.

Sec. 11. RCW 51.48.140 and 1989 c 175 s 121 are each amended to read as follows:

If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in RCW 34.05.510 through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee (~~(of five dollars)~~) under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk.

Sec. 12. RCW 82.32.210 and 1998 c 311 s 8 are each amended to read as follows:

(1) If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment. If, however, the department of revenue believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

(a) Interest imposed before January 1, 1999, shall be computed at the rate of one percent of the amount of the warrant for each thirty days or portion thereof.

(b) Interest imposed after December 31, 1998, shall be computed on a daily basis on the amount of outstanding tax or fee at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January

of each year for use in computing interest for that calendar year. As used in this subsection, "fee" does not include an administrative filing fee such as a court filing fee and warrant fee.

(2) The department shall file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed, and thereupon the amount of the warrant so docketed shall become a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien.

(3) The lien shall not be superior, however, to bona fide interests of third persons which had vested prior to the filing of the warrant when the third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction.

(4) The amount of the warrant so docketed shall thereupon also become a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

Sec. 13. RCW 82.36.047 and 1998 c 176 s 17 are each amended to read as follows:

When an assessment becomes final in accordance with this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest, and a filing fee (~~of five dollars~~) under RCW 36.18.012(10). The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the licensee or person mentioned in the warrant, the amount of the tax, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to and interest in all real and personal

property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of a civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee (~~of five dollars~~) under RCW 36.18.012(10).

Sec. 14. RCW 82.38.235 and 1998 c 176 s 78 are each amended to read as follows:

Whenever any assessment shall have become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties plus interest and a filing fee (~~of five dollars~~) under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the licensee mentioned in the warrant, the amount of the tax, penalties, interest and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee (~~of five dollars~~) under RCW 36.18.012(10), which shall be added to the amount of the warrant.

Passed the House March 14, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 147

[House Bill 1851]

INSURANCE—SMALL EMPLOYER DEFINITION

AN ACT Relating to modifying the definition of small employers for insurance purposes; and amending RCW 48.43.005.

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

Sec. 1. RCW 48.43.005 and 2000 c 79 s 18 are each amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences

in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(4) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand dollars; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least five thousand five hundred dollars; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

(5) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(6) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(7) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(8) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(9) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours

per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

(10) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(11) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(12) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(13) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(14) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

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

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

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

(16) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(17) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(18) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

- (a) Long-term care insurance governed by chapter 48.84 RCW;
- (b) Medicare supplemental health insurance governed by chapter 48.66 RCW;
- (c) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;
- (d) Disability income;
- (e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;
- (f) Workers' compensation coverage;
- (g) Accident only coverage;
- (h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;
- (i) Employer-sponsored self-funded health plans;
- (j) Dental only and vision only coverage; and
- (k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(19) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(20) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

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

(22) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(23) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision (~~(except school districts)~~), or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. The term "small employer" includes a self-employed individual or sole proprietor. The term "small employer" also includes a self-employed individual or sole proprietor who derives at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year.

(24) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(25) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 148

[Substitute House Bill 1920]

GUARDIANSHIP—MEDICAL REPORTS

AN ACT Relating to medical reports in guardianship proceedings by advanced registered nurse practitioners; and amending RCW 11.88.045.

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

Sec. 1. RCW 11.88.045 and 1996 c 249 s 9 are each amended to read as follows:

(1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW (~~or licensed or certified~~), psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner

licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician ((or)), psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician ((or)), psychologist, or advanced registered nurse practitioner;

(b) The education and experience of the physician ((or)), psychologist, or advanced registered nurse practitioner pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, ((psychological, or psychiatric)) or mental health history of the alleged incapacitated person as known to the examining physician ((or)), psychologist, or advanced registered nurse practitioner;

(e) The findings of the examining physician ((or)), psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician ((or)), psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or ((psychological)) mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

Passed the House March 9, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor May 2, 2001.
Filed in Office of Secretary of State May 2, 2001.

CHAPTER 149

[House Bill 2037]

IRRIGATION DISTRICTS—ADMINISTRATION

AN ACT Relating to administration of irrigation districts; and amending RCW 87.03.845, 85.08.850, 87.03.560, and 87.03.445.

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

Sec. 1. RCW 87.03.845 and 1998 c 84 s 1 are each amended to read as follows:

This section and RCW 87.03.847 through 87.03.855 provide the procedures by which a minor irrigation district may be merged into a major irrigation district as authorized by RCW 87.03.530(2).

To institute proceedings for such a merger, the board of directors of the minor district shall adopt a resolution requesting the board of directors of the major district to consider the merger, or proceedings for such a merger may be instituted by a petition requesting the board of directors of the major district to consider the merger, signed by ten owners of land within the minor district or five percent of the total number of landowners within the minor district, whichever is greater. However, if there are fewer than twenty owners of land within the minor irrigation district, the petition shall be signed by a majority of the landowners and filed with the board of directors of the major irrigation district.

For the purpose of determining the number of landowners required to initiate merger proceedings under this section, a husband and wife owning property as community property shall be considered a single landowner; two or more persons or entities holding title to property as tenants in common, joint tenants, tenants in partnership, or other form of joint ownership shall be considered a single landowner; and the petition requesting the merger shall be considered by the board of directors of the major irrigation district may be signed by either the husband or wife and by any one of the co-owners of jointly owned property.

The board of directors of the major irrigation district shall consider the request at the next regularly scheduled meeting of the board of directors of the major district following its receipt of the minor district's request or at a special meeting called for the purpose of considering the request. If the board of the major district denies the request of the minor district, no further action on the request shall be taken.

If the board of the major district does not deny the request, it shall conduct a public hearing on the request and shall give notice regarding the hearing. The notice shall describe the proposed merger and shall be published once a week for

two consecutive weeks preceding the date of the hearing and the last publication shall be not more than seven days before the date of the hearing. The notice shall contain a statement that unless the holders of title or evidence of title to at least twenty percent of the assessed lands within the major district file a protest opposing the merger with the board of the major district at or before the hearing, the board is free to approve the request for the merger without an election being conducted in the major district on the request. If the board of the major district is considering requests from more than one minor district, the hearing shall be conducted on all such requests.

Sec. 2. RCW 85.08.850 and 1996 c 313 s 1 are each amended to read as follows:

The petition requesting the merger shall be signed by the board of supervisors of, or by ten ~~((owners of land))~~ landowners located within, the drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district and presented to the clerk or clerks of the appropriate county legislative authority or authorities, at a regular or special meeting.

Sec. 3. RCW 87.03.560 and 1889-90 p 694 s 48 are each amended to read as follows:

The holder or holders of title, or evidence of title, representing one-half or more of any body of lands ~~((adjacent to the boundary of an irrigation district; which are contiguous and which, taken together, constitute one tract of land;))~~ may file with the board of directors of ~~((said))~~ an irrigation district a petition in writing, praying that the boundaries of ~~((said))~~ the district may be so changed as to include ~~((therein said))~~ such lands. The petition shall describe the boundaries of ~~((said))~~ the parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners respectively of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion within ~~((said))~~ the district of the parcels or tracts of land described in the petition, and of which ~~((said))~~ the petition alleges they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Sec. 4. RCW 87.03.445 and 1998 c 285 s 3 are each amended to read as follows:

(1) The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension, and betterment of the works and improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid for by the board of directors out of the funds received from bond sales as well as other district funds.

(2) For the purpose of defraying the costs and expenses of the organization of the district, and of the care, operation, management, maintenance, repair, and improvement of the district and its irrigation water, domestic water, electric power, drainage, or sewer facilities or of any portion thereof, or for the payment of any indebtedness due the United States or the state of Washington, or for the payment of district bonds, the board may either fix rates or tolls and charges, and collect the same from all persons for whom district service is made available for irrigation water, domestic water, electric power, drainage or sewerage, and other purposes, or it may provide for the payment of said costs and expenses by a levy of assessment therefor, or by both said rates or tolls and charges and assessment.

(3) If the assessment method is utilized, the levy of assessments shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform with the provisions of this chapter, relating to the collection of assessments for the payment of principal and interest of bonds herein provided for, and shall be made at the same time.

(4) If the rates or tolls and charges method is adopted in whole or in part, the secretary shall deliver to the board of directors, within the time for filing the assessment roll, a schedule containing the names of the owners or reputed owners, as shown on the rolls of the county treasurer as of the first Tuesday in November of each year such a schedule is filed of the various parcels of land against which rates or tolls and charges are to be levied, the description of each such parcel of land and the amount to be charged against each parcel for irrigation water, domestic water, electric power, drainage, sewerage, and other district costs and expenses. Said schedule of rates or tolls and charges shall be equalized pursuant to the same notice, in the same manner, at the same time and with the same legal effect as in the case of assessments. Such schedule of rates or tolls and charges for a given year shall be filed with the proper county treasurer within the same time as that provided by law for the filing of the annual assessment roll, and the county treasurer shall collect and receipt for the payment of said rates or tolls and charges and credit them to the proper funds of the district. The board may designate the time and manner of making such collections and shall require the same to be paid in advance of delivery of water and other service. All tolls and charges levied shall also at once become and constitute an assessment upon and against the lands for which they are levied, with the same force and effect, and the same manner of enforcement, and with the same rate of interest from date of delinquency, in case of nonpayment, as other district assessments.

(5) As an alternative method of imposing, collecting, and enforcing such rates or tolls and charges, the board may also base such rates or tolls and charges upon the quantity of irrigation water, domestic water, or electric power delivered, or drainage or sewage disposed of, and may fix a minimum rate or toll and charge to be paid by each parcel of land or use within the district for the delivery or disposal

of a stated quantity of each such service with a graduated charge for additional quantities of such services delivered or disposed of. If the board elects to utilize this alternative method of imposing, collecting, and enforcing such rates or tolls and charges, there shall be no requirement that the schedule referred to in the preceding paragraph be prepared, be filed with the board of directors by the secretary, be equalized, or be filed with a county treasurer. The board shall enforce collection of such rates or tolls and charges against property to which and its owners to whom the service is available, such rates or tolls and charges being deemed charges and a lien against the property to which the service is available, until paid in full. Prior to furnishing services, a board 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.

(6) The board may provide by resolution that where such rates or tolls and charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate not to exceed twelve percent per annum fixed by resolution shall be a lien against the property to which the service was available, subject only to the lien for general taxes. The district may, at any time after such rates or tolls and charges and penalties provided for herein are delinquent for a period of one year, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated.

(7) A board may determine how to apply partial payments on past due accounts.

(8) A board 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 board in writing that a property served by the board 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 board shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the board 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 board 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 (8), the board shall have no lien against the premises for the tenant's delinquent and unpaid charges.

(9) The court may allow, in addition to the costs and disbursements provided by statute, such attorneys' fees as it may adjudge reasonable. The action shall be in rem against the property, and in addition may be brought in the name of the

district against an individual, or against all of those who are delinquent, in one action, and the rules of the court shall control as in other civil actions. The board may in the same year use the assessment method for part of the lands in the district and the rates or tolls and charges method for the remaining lands in the district in such proportion as it may deem advisable for the best interest of the district.

(10) The procedures herein provided for the collection and enforcement of rates, tolls, and charges also shall be applicable and available to the districts board of directors for the collection and enforcement of charges for water imposed by contract entered into or administered by the district's board of directors.

Passed the House March 9, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 150

[Senate Bill 5863]

COWLITZ RIVER

AN ACT Relating to an exchange of bedlands and the resolution of boundary disputes in and near the Cowlitz river near the confluence of the Columbia river in Longview, Washington; adding a new section to chapter 79.08 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 in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike.

NEW SECTION. Sec. 2. A new section is added to chapter 79.08 RCW to read as follows:

(1) The department of natural resources is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now

exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department of natural resources is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of this act, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in this act shall be deemed to convey to the department of natural resources the power of eminent domain.

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 March 9, 2001.
 Passed the House April 5, 2001.
 Approved by the Governor May 2, 2001.
 Filed in Office of Secretary of State May 2, 2001.

CHAPTER 151

[Senate Bill 5127]

SHERIFF'S OFFICE—UNCLASSIFIED POSITIONS

AN ACT Relating to determining the number of unclassified personnel in the sheriff's office; and amending RCW 41.14.070.

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

Sec. 1. RCW 41.14.070 and 1997 c 62 s 1 are each amended to read as follows:

(1) The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the county sheriff in every county and an additional number of positions, designated the unclassified service, determined as follows:

Staff Personnel	Unclassified Position Appointments
1 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 (and over) through 250	6
251 through 500	8

501 and over10

(2) The unclassified position appointments authorized by this section must include selections from the following positions up to the limit of the number of positions authorized: Undersheriff, inspector, chief criminal deputy, chief civil deputy, jail superintendent, and administrative assistant or administrative secretary. The initial selection of specific positions to be exempt shall be made by the sheriff, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are to be exempt may be made only with the concurrence of the sheriff and the civil service commission, and then only after the civil service commission has heard the issue in open meeting. Should the position or positions initially selected by the sheriff to be exempt (unclassified) pursuant to this section be under the classified civil service at the time of such selection, and should it (or they) be occupied, the employee(s) occupying said position(s) shall have the right to return to the next highest position or a like position under classified civil service.

(3) In counties with a sheriff's department that operates the 911 emergency communications system, in addition to the unclassified positions authorized in subsections (1), (2), and (4) of this section, the sheriff may designate one unclassified position for the 911 emergency communications system.

(4) In addition to the unclassified positions authorized in this section, the county legislative authority of any county with a population of five hundred thousand or more operating under a home rule charter may designate unclassified positions of administrative responsibility not to exceed ((twelve)) twenty positions.

Passed the Senate March 9, 2001.

Passed the House April 6, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 152

[Substitute Senate Bill 5205]

INDUSTRIAL INSURANCE—WORKER'S CLAIM FILE RECORDS

AN ACT Relating to providing information for independent medical examinations; and amending RCW 51.14.120 and 51.36.070.

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

Sec. 1. RCW 51.14.120 and 1993 c 122 s 2 are each amended to read as follows:

(1) The self-insurer shall provide, when authorized under RCW 51.28.070, a copy of the employee's claim file at no cost within fifteen days of receipt of a request by the employee or the employee's representative, and shall provide the physician performing an examination with all relevant medical records from the worker's claim file, but only to the extent required of the department under RCW 51.36.070. If the self-insured employer determines that release of the claim file to

an unrepresented worker in whole or in part, may not be in the worker's best interests, the employer must submit a request for denial with an explanation along with a copy of that portion of the claim file not previously provided within twenty days after the request from the worker. In the case of second or subsequent requests, a reasonable charge for copying may be made. The self-insurer shall provide the entire contents of the claim file unless the request is for only a particular portion of the file. Any new material added to the claim file after the initial request shall be provided under the same terms and conditions as the initial request.

(2) The self-insurer shall transmit notice to the department of any protest or appeal by an employee relating to the administration of an industrial injury or occupational disease claim under this chapter within five working days of receipt. The date that the protest or appeal is received by the self-insurer shall be deemed to be the date the protest is received by the department for the purpose of RCW 51.52.050.

(3) The self-insurer shall submit a medical report with the request for closure of a claim under this chapter.

Sec. 2. RCW 51.36.070 and 1977 ex.s. c 350 s 60 are each amended to read as follows:

Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a worker shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department or self-insurer shall provide the physician performing an examination with all relevant medical records from the worker's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the worker of reasonable expenses connected therewith.

Passed the Senate March 14, 2001.

Passed the House April 6, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 153

[Senate Bill 5270]

VICTIMS' COMPENSATION—VICTIMS OF SEXUALLY VIOLENT PREDATORS

AN ACT Relating to modifying requirements for certain victims of sexually violent predators to be eligible for victims' compensation; and amending RCW 7.68.060.

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

Sec. 1. RCW 7.68.060 and 1996 c 122 s 4 are each amended to read as follows:

(1) For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 shall apply: PROVIDED, That except for applications received pursuant to subsection (4) of this section, no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within two years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued, unless the director has determined that "good cause" exists to expand the time permitted to receive the application. "Good cause" shall be determined by the department on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his or her behalf to a local police department or sheriff's office within twelve months of its occurrence or, if it could not reasonably have been reported within that period, within twelve months of the time when a report could reasonably have been made. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victims.

(2) This section shall apply only to criminal acts reported after December 31, 1985.

(3) Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victim.

(4) A right to benefits under this chapter is available to any victim of a person against whom the state initiates proceedings under chapter 71.09 RCW. The right created under this subsection shall accrue when the victim is notified of proceedings under chapter 71.09 RCW or the victim is interviewed, deposed, or testifies as a witness in connection with the proceedings. An application for benefits under this subsection must be received by the department within two years after the date the victim's right accrued unless the director determines that good cause exists to expand the time to receive the application. The director shall determine "good cause" on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the right of the victim accrued. Benefits under this subsection shall be limited to compensation for costs or losses incurred on or after the date the victim's right accrues for a claim allowed under this subsection.

Passed the Senate March 6, 2001.
 Passed the House April 12, 2001.
 Approved by the Governor May 2, 2001.
 Filed in Office of Secretary of State May 2, 2001.

CHAPTER 154

[Senate Bill 5389]

SMALL CLAIMS COURT—JURISDICTION

AN ACT Relating to small claims court; and amending RCW 12.40.010.

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

Sec. 1. RCW 12.40.010 and 1991 c 71 s 1 are each amended to read as follows:

In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court."((:-)) The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed ~~((two))~~ four thousand ~~((five hundred))~~ dollars.

Passed the Senate March 9, 2001.
 Passed the House April 9, 2001.
 Approved by the Governor May 2, 2001.
 Filed in Office of Secretary of State May 2, 2001.

CHAPTER 155

[Senate Bill 5440]

FISH AND WILDLIFE COMMISSION—GUBERNATORIAL APPOINTMENTS

AN ACT Relating to correcting the number of gubernatorial appointments to the fish and wildlife commission; and amending RCW 77.04.030.

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

Sec. 1. RCW 77.04.030 and 2000 c 107 s 203 are each amended to read as follows:

The fish and wildlife commission consists of nine registered voters of the state. In January of each odd-numbered year, the governor shall appoint with the advice and consent of the senate ~~((two))~~ three registered voters to the commission to serve for terms of six years from that January or until their successors are appointed and qualified. If a vacancy occurs on the commission prior to the expiration of a term, the governor shall appoint a registered voter within sixty days to complete the term. Three members shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. Three additional members shall be appointed at-large. No two members may be residents

of the same county. The legal office of the commission is at the administrative office of the department in Olympia.

Passed the Senate March 10, 2001.

Passed the House April 12, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 156

[Senate Bill 5491]

SMALL CLAIMS APPEALS

AN ACT Relating to small claims appeals; and amending RCW 12.36.050 and 12.36.055.

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

Sec. 1. RCW 12.36.050 and 1998 c 52 s 3 are each amended to read as follows:

(1) Within fourteen days after a small claims appeal has been filed in superior court by the clerk of the district court pursuant to RCW 12.36.020(3), the complete record as defined in subsection (2) of this section shall be made and certified by the clerk of the district court to be correct. The clerk shall then immediately transmit the complete record to superior court. The superior court shall then become possessed of the cause. All further proceedings shall be in the superior court, including enforcement of any judgment rendered. Any ~~((mandatory))~~ superior court procedures such as arbitration or other methods of dispute resolution ~~((with apply as if the cause was originally filed in))~~ may be utilized by the superior court in its discretion. ~~((The statute governing the trial de novo shall only apply to those cases set for trial after compliance with superior court procedures.))~~

(2) The complete record shall consist of a transcript of all entries made in the district court docket relating to the case, together with all the process and other papers relating to the case filed with the district court and ~~((any))~~ a contemporaneous recording made of the proceeding.

Sec. 2. RCW 12.36.055 and 1997 c 352 s 11 are each amended to read as follows:

(1) The appeal from a small claims judgment or decision shall be ~~((a trial))~~ de novo ~~((in superior court. A trial de novo pursuant to this chapter shall be tried as nearly as possible in the manner of the original small claims trial. No jury may be allowed, or attorney or legal paraprofessional involved, without written order of the superior court, unless allowed in the original trial. No new pleadings other than the notice of appeal may be allowed without written permission of the superior court. Each party shall be allowed equal time, but no more than thirty minutes each without permission of the superior court. No new or other evidence, nor new or other testimony may be presented other than at the trial in small claims court, without permission of the superior))~~ upon the record of the case, as entered by the district court.

(2) Any cases heard in superior court pursuant to this section may be heard by a duly appointed commissioner. As used in this chapter "judge" includes any duly appointed commissioner.

Passed the Senate March 12, 2001.

Passed the House April 9, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 157

[Substitute Senate Bill 5734]

AGRICULTURAL FAIRS

AN ACT Relating to agricultural fairs; amending RCW 15.76.140; and declaring an emergency.

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

Sec. 1. RCW 15.76.140 and 1995 c 374 s 71 are each amended to read as follows:

(1) Before any agricultural fair may become eligible for state allocations it must have conducted two successful consecutive annual fairs immediately preceding application for such allocations, and have its application therefor approved by the director.

(2) Beginning January 1, 1994, (~~and until June 30, 1997;~~) the director may waive this requirement for an agricultural fair that through itself or its predecessor sponsoring organization has successfully operated at least two years as a county fair (~~(; has received a funding allocation as a county fair under chapter 374, Laws of 1995 for those two years;)~~) and that reorganizes as an area fair.

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 9, 2001.

Passed the House April 6, 2001.

Approved by the Governor May 2, 2001.

Filed in Office of Secretary of State May 2, 2001.

CHAPTER 158

[Engrossed Second Substitute Senate Bill 5695]

TEACHER CERTIFICATION—ALTERNATIVE ROUTES

AN ACT Relating to high-quality alternative routes to teacher certification; adding a new chapter to Title 28A RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds and declares:

(1) Teacher qualifications and effectiveness are the most important influences on student learning in schools.

(2) Preparation of individuals to become well-qualified, effective teachers must be high quality.

(3) Teachers who complete high-quality alternative route programs with intensive field-based experience, adequate coursework, and strong mentorship do as well or better than teachers who complete traditional preparation programs.

(4) High-quality alternative route programs can provide more flexibility and expedience for individuals to transition from their current career to teaching.

(5) High-quality alternative route programs can help school districts fill subject matter shortage areas and areas with shortages due to geographic location.

(6) Regardless of route, all candidates for residency teacher certification must meet the high standards required by the state.

The legislature recognizes widespread concerns about the potential for teacher shortages and finds that classified instructional staff in public schools represent a great untapped resource for recruiting the teachers of the future.

NEW SECTION. Sec. 2. There is hereby created a statewide partnership grant program to provide new high-quality alternative routes to residency teacher certification. To the extent funds are appropriated for this specific purpose, funds provided under this partnership grant program shall be used solely for school districts, or consortia of school districts, to partner with state-approved higher education teacher preparation programs to provide one or more of three alternative route programs in section 5 of this act, aimed at recruiting candidates to teaching in subject matter shortage areas and areas with shortages due to geographic location. Districts, or consortia of districts, may also include their educational service districts in their partnership grant program. Partnership programs receiving grants may enroll candidates as early as January 2002.

NEW SECTION. Sec. 3. (1) Each district or consortia of school districts applying for state funds through this program shall submit a proposal to the Washington professional educator standards board specifying:

(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;

(b) The number of candidates that will be enrolled per route;

(c) An identification, indication of commitment, and description of the role of approved teacher preparation programs that are partnering with the district or consortia of districts;

(d) An assurance of district provision of adequate training for mentor teachers either through participation in a state mentor training academy or district-provided training that meets state-established mentor-training standards specific to the mentoring of alternative route candidates;

(e) An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;

(f) A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in section 5 of this act; and

(g) The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any requirements accordingly. The plan may include the following components:

(i) A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. For route one and two candidates, before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision. For route three candidates, the mentor of the teacher candidate shall make the decision;

(ii) Identification of performance indicators based on the knowledge and skills standards required for residency certification by the state board of education;

(iii) Identification of benchmarks that will indicate when the standard is met for all performance indicators;

(iv) A description of strategies for assessing candidate performance on the benchmarks;

(v) Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year; and

(vi) A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program.

(2) Districts may apply for program funds to pay stipends to both mentor teachers and interns during their mentored internship. For both intern stipends and accompanying mentor stipends, the per intern district request for funds may not exceed the amount designated by the BA+0 cell on the statewide teacher salary allocation schedule. This amount shall be prorated for internships and mentorships that last less than a full school year. Interns in the program for a full year shall be provided a stipend of at least eighty percent of the amount generated by the BA+0 cell on the statewide teacher salary allocation schedule. This amount shall be prorated for internships that last less than a full school year.

NEW SECTION. Sec. 4. (1) The professional educator standards board, with support from the office of the superintendent of public instruction, shall select school districts and consortia of school districts to receive partnership grants from

funds appropriated by the legislature for this purpose. Factors to be considered in selecting proposals include:

(a) The degree to which the district, or consortia of districts in partnership, are currently experiencing teacher shortages;

(b) The degree to which the proposal addresses criteria specified in section 3 of this act and is in keeping with specifications of program routes in section 5 of this act;

(c) The cost-effectiveness of the proposed program; and

(d) Any demonstrated district and in-kind contributions to the program.

(2) Selection of proposals shall also take into consideration the need to ensure an adequate number of candidates for each type of route in order to evaluate their success.

(3) Funds appropriated for the partnership grant program in this chapter shall be administered by the office of the superintendent of public instruction.

NEW SECTION. Sec. 5. Partnership grants funded under this chapter shall operate one to three specific route programs. Successful completion of the program shall make a candidate eligible for residency teacher certification. For route one and two candidates, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate has successfully completed the program. For route three candidates, the mentor of the teacher candidate shall make the determination that the candidate has successfully completed the program.

(1) Partnership grant programs seeking funds to operate route one programs shall enroll currently employed classified instructional employees with transferable associate degrees seeking residency teacher certification with endorsements in special education, bilingual education, or English as a second language. It is anticipated that candidates enrolled in this route will complete both their baccalaureate degree and requirements for residency certification in two years or less, including a mentored internship to be completed in the final year. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including three years of successful student interaction and leadership as a classified instructional employee;

(b) Successful passage of the statewide basic skills exam, when available; and

(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.

(2) Partnership grant programs seeking funds to operate route two programs shall enroll currently employed classified staff with baccalaureate degrees seeking residency teacher certification in subject matter shortage areas and areas with shortages due to geographic location. Candidates enrolled in this route must complete a mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via video-conference over the K-20 network, in collaboration with the

partnership program's higher education partner. In addition, partnership grant programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including three years of successful student interaction and leadership as classified staff;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of the statewide basic skills exam, when available.

(3) Partnership grant programs seeking funds to operate route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application, or who hold emergency substitute certificates. When selecting candidates for certification through route three, districts shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. For route three only, the districts may include additional candidates in nonshortage subject areas if the candidates are seeking endorsements with a secondary grade level designation as defined by rule by the state board of education. The districts shall disclose to candidates in nonshortage subject areas available information on the demand in those subject areas. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) Five years' experience in the work force;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) External validation of qualifications, including demonstrated successful experience with students or children, such as references letters and letters of support from previous employers;

(e) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(f) Successful passage of statewide basic skills exams, when available.

NEW SECTION. Sec. 6. The alternative route conditional scholarship program is created under the following guidelines:

(1) The program shall be administered by the higher education coordinating board. In administering the program, the higher education coordinating board has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the program;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the program.

(2) Participation in the alternative route conditional scholarship program is limited to classified staff in routes one and two of the partnership grant programs under section 5 of this act. The Washington professional educator standards board shall select classified staff to receive conditional scholarships.

(3) In order to receive conditional scholarship awards, recipients shall be accepted and maintain enrollment in alternative certification routes through the partnership grant program, as provided in section 5 of this act. Recipients must continue to make satisfactory progress towards completion of the alternative route certification program and receipt of a residency teaching certificate.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients that fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The higher education coordinating board shall adopt rules to define the terms for repayment, including applicable interest rates, fees, and deferments.

(6) To the extent funds are appropriated for this specific purpose, the annual amount of the scholarship is the annual cost of tuition for the alternative route certification program in which the recipient is enrolled, not to exceed four thousand dollars. The board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(7) The higher education coordinating board may deposit all appropriations, collections, and any other funds received for the program in this chapter in the student loan account authorized in RCW 28B.102.060.

NEW SECTION. Sec. 7. This chapter expires June 30, 2005.

NEW SECTION. Sec. 8. The Washington state institute for public policy shall submit to the education and fiscal committees of the legislature, the governor, the state board of education, and the Washington professional educator standards board, an interim evaluation of partnership grant programs funded under this

chapter by December 1, 2002, and a final evaluation by December 1, 2004. If specific funding for the purposes of this section, referencing this section and this act by bill or chapter number, is not provided by June 30, 2001, in the omnibus appropriations act, this section is null and void.

NEW SECTION. Sec. 9. Sections 1 through 8 and 10 of this act constitute a new chapter in Title 28A RCW.

NEW SECTION. Sec. 10. School districts or approved private schools' ability to employ personnel under certification for emergency or temporary, substitute, or provisional duty as authorized by chapter 28A.410 RCW are not affected by the provisions of this act.

Passed the Senate April 19, 2001.

Passed the House April 18, 2001.

Approved by the Governor May 3, 2001.

Filed in Office of Secretary of State May 3, 2001.

CHAPTER 159

[Substitute Senate Bill 5101]

CONTRACTORS

AN ACT Relating to consumer protection regarding contractors; amending RCW 18.27.010, 18.27.030, 18.27.040, 18.27.050, 18.27.090, 18.27.100, 18.27.114, 18.27.310, 18.27.320, and 18.27.075; reenacting and amending RCW 18.27.060; adding new sections to chapter 18.27 RCW; and prescribing penalties.

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

Sec. 1. RCW 18.27.010 and 1997 c 314 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) "Contractor" means any person, firm, or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith or who installs or repairs roofing or siding; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein. "Contractor" includes any person, firm, ((or)) corporation, or other entity covered by this subsection, whether or not registered as required under this chapter.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries or designated representative employed by the department.

(4) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part. "General contractor" shall not include an individual who does all work personally without employees or other "specialty contractors" as defined in this section. The terms "general contractor" and "builder" are synonymous.

~~((3))~~ (5) "Partnership" means a business formed under Title 25 RCW,

(6) "Registration cancellation" means a written notice from the department that a contractor's action is in violation of this chapter and that the contractor's registration has been revoked.

(7) "Registration suspension" means a written notice from the department that a contractor's action is a violation of this chapter and that the contractor's registration has been suspended for a specified time, or until the contractor shows evidence of compliance with this chapter.

(8) "Residential homeowner" means an individual person or persons owning or leasing real property:

(a) Upon which one single-family residence is to be built and in which the owner or lessee intends to reside upon completion of any construction; or

(b) Upon which there is a single-family residence to which improvements are to be made and in which the owner or lessee intends to reside upon completion of any construction.

(9) "Specialty contractor" means a contractor whose operations do not fall within the ~~((foregoing))~~ definition of "general contractor".

~~((4))~~ (10) "Unregistered contractor" means a person, firm, ((or)) corporation, or other entity doing work as a contractor without being registered in compliance with this chapter. "Unregistered contractor" includes contractors whose registration is expired ((for more than thirty days beyond the renewal date or has been)), revoked, or suspended. "Unregistered contractor" does not include a contractor who has maintained a valid bond and the insurance or assigned account required by RCW 18.27.050, and whose registration has lapsed for thirty or fewer days.

~~((5))~~ "Department" means the department of labor and industries.

~~(6)~~ "Director" means the director of the department of labor and industries.

~~(7))~~ (11) "Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

(12) "Verification" means the receipt and duplication by the city, town, or county of a contractor registration card that is current on its face, checking the department's contractor registration data base, or calling the department to confirm that the contractor is registered.

Sec. 2. RCW 18.27.030 and 1998 c 279 s 3 are each amended to read as follows:

(1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number.

(b) Unified business identifier number, if required by the department of revenue.

(c) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law.

~~((c))~~ (d) Employment security department number.

~~((d))~~ (e) State excise tax registration number.

~~((e))~~ (f) Unified business identifier (UBI) account number may be substituted for the information required by ~~((b))~~ (c) of this subsection if the applicant will not employ employees in Washington, and by ~~((c))~~ (d) and ~~((d))~~ (e) of this subsection.

~~((f))~~ (g) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

~~((g))~~ (h) The name and address of each partner if the applicant is a firm or partnership, or the name and address of the owner if the applicant is an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant is a corporation or the name and address of all members of other business entities. The information contained in such application is a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)~~((b))~~ (c) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3)~~(a)~~ The department shall deny an application for registration if: (i) The applicant has been previously ~~(registered)~~ performing work subject to this chapter as a sole proprietor, partnership, ~~((or))~~ corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on this chapter ~~((that was incurred during a previous registration under this chapter)) or the applicant owes the department money for~~

penalties assessed or fees due under this chapter as a result of a final judgment: (ii) the applicant was a principal or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment: or (iii) the applicant does not have a valid unified business identifier number, if required by the department of revenue.

(b) The department shall suspend an active registration if (i) the department has notice that the registrant is a sole proprietor or a principal or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter: or (ii) the applicant does not maintain a valid unified business identifier number, if required by the department of revenue.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

Sec. 3. RCW 18.27.040 and 1997 c 314 s 5 are each amended to read as follows:

(1) Each applicant shall file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in the sum of ~~((six))~~ twelve thousand dollars if the applicant is a general contractor and ~~((four))~~ six thousand dollars if the applicant is a specialty contractor. If no valid bond is already on file with the department at the time the application is filed, a bond must accompany the registration application. The bond shall have the state of Washington named as obligee with good and sufficient surety in a form to be approved by the department. 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))~~. A cancellation or revocation of the bond or withdrawal of the surety from the bond automatically suspends the registration issued to the registrant until a new bond or reinstatement notice has been filed and approved as provided in this section. The bond shall be conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of breach of contract including negligent or improper work in the conduct of the contracting business. A change in the name of a business or a change in the type of business entity shall not impair a bond for the purposes of this section so long as one of the original applicants for such bond maintains partial ownership in the business covered by the bond.

~~(2) ((Any contractor registered as of July 1, 1997, who maintains such registration in accordance with this chapter shall be in compliance with this chapter until the next annual renewal of the contractor's certificate of registration. At that~~

time)) At the time of initial registration or renewal, the contractor shall provide a bond(~~(, cash deposit,)~~) or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall issue or renew the contractor's certificate of registration. Any contractor registered as of July 1, 2001, who maintains that registration in accordance with this chapter is in compliance with this chapter until the next renewal of the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit upon the bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon the bond or deposit (~~(shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date of expiration of the certificate of registration in force at the time))~~ brought by a residential homeowner for breach of contract by a party to the construction contract shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within two years from the date the claimed contract work was substantially completed or abandoned. Action upon the bond or deposit brought by any other authorized party shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned. Service of process in an action against the contractor, the contractor's bond, or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee ((of ten)) adopted by rule of not less than twenty dollars to cover the (~~(handling)~~) costs shall be served by registered or certified mail, or other delivery service requiring notice of receipt, upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the (~~(ten-dollar)~~) fee and three copies of the summons and complaint. The service shall constitute service on the registrant and the surety for suit upon the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the registrant at the address listed in the registrant's application and to the surety within (~~(forty-eight hours)~~) two days after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the bond has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an

amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

- (a) Employee labor and claims of laborers, including employee benefits;
- (b) Claims for breach of contract by a party to the construction contract;
- (c) Registered or licensed subcontractors, material, and equipment;
- (d) Taxes and contributions due the state of Washington;
- (e) Any court costs, interest, and attorney's fees plaintiff may be entitled to recover. The surety is not liable for any amount in excess of the penal limit of its bond.

A payment made by the surety in good faith exonerates the bond to the extent of any payment made by the surety.

(5) The total amount paid from a bond or deposit required of a general contractor by this section to claimants other than residential homeowners must not exceed one-half of the bond amount. The total amount paid from a bond or deposit required of a specialty contractor by this section to claimants other than residential homeowners must not exceed one-half of the bond amount or four thousand dollars, whichever is greater.

(6) The prevailing party in an action filed under this section against the contractor and contractor's bond or deposit, for breach of contract by a party to a construction contract, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond is not liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction.

(7) If a final judgment impairs the liability of the surety upon the bond so furnished that there ~~((shall not be))~~ is not in effect a bond ~~((undertaking))~~ in the full amount prescribed in this section, ~~((the department shall suspend))~~ the registration of the contractor is automatically suspended until the bond liability in the required amount unimpaired by unsatisfied judgment claims is furnished. ~~((If the bond becomes fully impaired, a new bond must be furnished at the rates prescribed by this section:))~~

~~((6))~~ (8) In lieu of the surety bond required by this section the contractor may file with the department a deposit consisting of cash or other security acceptable to the department.

~~((7))~~ (9) Any person having filed and served a summons and complaint as required by this section having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the

superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

~~((8))~~ (10) The director may require an applicant applying to renew or reinstate a registration or applying for a new registration to file a bond of up to three times the normally required amount, if the director determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years a total of six final judgments in actions under this chapter involving a residential single-family dwelling on two or more different structures.

(11) The director may adopt rules necessary for the proper administration of the security.

Sec. 4. RCW 18.27.050 and 1987 c 303 s 1 are each amended to read as follows:

(1) At the time of registration and subsequent reregistration, the applicant shall furnish insurance or financial responsibility in the form of an assigned account in the amount of ~~((twenty))~~ fifty thousand dollars for injury or damages to property, and ~~((fifty))~~ one hundred thousand dollars for injury or damage including death to any one person, and ~~((one))~~ two hundred thousand dollars for injury or damage including death to more than one person ~~((or financial responsibility to satisfy these amounts))~~.

(2) ~~((Failure to maintain insurance or financial responsibility relative to the contractor's activities shall be cause to suspend or deny the contractor his or her or their registration.))~~ An expiration, cancellation, or revocation of the insurance policy or withdrawal of the insurer from the insurance policy automatically suspends the registration issued to the registrant until a new insurance policy or reinstatement notice has been filed and approved as provided in this section.

(3)(a) Proof of financial responsibility authorized in this section may be given by providing, in the amount required by subsection (1) of this section, an assigned account acceptable to the department. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the contractor for damage to property or injury or death to any person occurring in the contractor's contracting operations, according to the provisions of the assigned account agreement. The department shall have no liability for payment in excess of the amount of the assigned account.

(b) The assigned account filed with the director as proof of financial responsibility shall be canceled at the expiration of three years after:

(i) The contractor's registration has expired or been revoked; or

(ii) The contractor has furnished proof of insurance as required by subsection (1) of this section;

if, in either case, no legal action has been instituted against the contractor or on the account at the expiration of the three-year period.

(c) If a contractor chooses to file an assigned account as authorized in this section, the contractor shall, on any contracting project, notify each person with whom the contractor enters into a contract or to whom the contractor submits a bid that the contractor has filed an assigned account in lieu of insurance and that recovery from the account for any claim against the contractor for property damage or personal injury or death occurring in the project requires the claimant to obtain a court judgment.

Sec. 5. RCW 18.27.060 and 1997 c 314 s 6 and 1997 c 58 s 817 are each reenacted and amended to read as follows:

(1) A certificate of registration shall be valid for ~~((one))~~ two years and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant. ~~((The certificate shall be valid for:~~

~~— (a) One year;~~

~~— (b) Until the bond expires; or~~

~~— (c) Until the insurance expires, whichever comes first. The department shall place the expiration date on the certificate.~~

~~— (3) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full one year.~~

~~((4))~~ (3) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall mail notice of the suspension to the contractor's address on the certificate of registration by certified and by first class mail within ~~((forty-eight hours))~~ two days after suspension.

~~((5))~~ (4) Renewal of registration is valid on the date the department receives the required fee and proof of bond and liability insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery shall serve as the contractor's proof of renewed registration until he or she receives verification from the department.

~~((6))~~ (5) The department shall immediately suspend the certificate of registration of a contractor who has been certified 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 as provided in RCW 74.20A.320. The certificate of registration shall not be reissued or renewed unless the person provides to the department a release from the department of social and health services stating that he or she is in compliance with the order and the person has continued to meet all other requirements for certification during the suspension.

NEW SECTION. **Sec. 6.** A new section is added to chapter 18.27 RCW to read as follows:

(1) If an unregistered contractor defaults in a payment, penalty, or fine due to the department, the director or the director's designee may issue a notice of assessment certifying the amount due. The notice must be served upon the unregistered contractor by mailing the notice to the unregistered contractor by certified mail to the unregistered contractor's last known address or served in the manner prescribed for the service of a summons in a civil action.

(2) A notice of assessment becomes final thirty days from the date the notice was served upon the unregistered contractor unless a written request for reconsideration is filed with the department or an appeal is filed in a court of competent jurisdiction in the manner specified in RCW 34.05.510 through 34.05.598. The request for reconsideration must set forth with particularity the reason for the unregistered contractor's request. The department, within thirty days after receiving a written request for reconsideration, may modify or reverse a notice of assessment, or may hold a notice of assessment in abeyance pending further investigation. If a final decision of a court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision of the court, is final.

(3) The director or the director's designee may file with the clerk of any county within the state, a warrant in the amount of the notice of assessment, plus interest, penalties, and a filing fee of twenty dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the unregistered contractor mentioned in the warrant, the amount of payment, penalty, fine due on it, or filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed shall become a lien upon the title to, and interest in, all real and personal property of the unregistered contractor against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the unregistered contractor within three days of filing with the clerk.

(4) The director or the director's designee may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the

state, property that is or will become due, owing, or belonging to an unregistered contractor upon whom a notice of assessment has been served by the department for payments, penalties, or fines due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by an authorized representative of the director. A person, firm, corporation, other entity, 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 of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director or the director's authorized representative. The director shall hold the property in trust for application on the unregistered contractor's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an unregistered contractor and the property subject to it is wages, the unregistered contractor may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(5) In addition to the procedure for collection of a payment, penalty, or fine due to the department as set forth in this section, the department may recover civil penalties imposed under this chapter in a civil action in the name of the department brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

Sec. 7. RCW 18.27.090 and 1997 c 314 s 8 are each amended to read as follows:

The registration provisions of this chapter ((does)) do not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

- (2) Officers of a court when they are acting within the scope of their office;
- (3) Public utilities operating under the regulations of the utilities and transportation commission in construction, maintenance, or development work incidental to their own business;
- (4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;
- (5) The sale or installation of any finished products, materials, or articles of merchandise (~~which~~) that are not actually fabricated into and do not become a permanent fixed part of a structure;
- (6) Any construction, alteration, improvement, or repair of personal property (~~(; except this chapter shall apply to all mobile/manufactured housing. A mobile/manufactured home may be installed, set up, or repaired by the registered or legal owner, by a contractor registered under this chapter)~~) performed by the registered or legal owner, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;
- (7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;
- (8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;
- (9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor, or that he or she is qualified to engage in the business of contractor;
- (10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor, except that this exemption shall not deprive the owner of the protections of this chapter against registered and unregistered contractors;

(12) Any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not but this exemption shall not apply to any person otherwise covered by this chapter who constructs an improvement on his or her own property with the intention and for the purpose of selling the improved property;

(13) Owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his or her professional capacity, an electrician licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his or her license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his or her sole compensation or as an employee with wages as his or her sole compensation;

(16) Contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work;

(17) A mobile/manufactured home dealer or manufacturer who subcontracts the installation, set-up, or repair work to actively registered contractors. This exemption only applies to the installation, set-up, or repair of the mobile/manufactured homes that were manufactured or sold by the mobile/manufactured home dealer or manufacturer.

Sec. 8. RCW 18.27.100 and 1997 c 314 s 9 are each amended to read as follows:

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

(3)(a) All advertising that shows the contractor's name or address shall show the contractor's current registration number. The registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number: PROVIDED, That signs on motor vehicles subject to RCW 46.16.010 and on-premise signs shall not constitute advertising as

provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A contractor shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required. Advertising by airwave transmission shall not be subject to this subsection (3)(a).

(b) The director may issue a subpoena to any person or entity selling any advertising subject to this section for the name, address, and telephone number provided to the seller of the advertising by the purchaser of the advertising. The subpoena must have enclosed a stamped, self-addressed envelope and blank form to be filled out by the seller of the advertising. If the seller of the advertising has the information on file, the seller shall, within a reasonable time, return the completed form to the department. The subpoena must be issued (~~before forty-eight hours~~) no more than two days after the expiration of the issue or publication containing the advertising or after the broadcast of the advertising. The good-faith compliance by a seller of advertising with a written request of the department for information concerning the purchaser of advertising shall constitute a complete defense to any civil or criminal action brought against the seller of advertising arising from such compliance. Advertising by airwave or electronic transmission is subject to this subsection (3)(b).

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

(5) A contractor shall not falsify a registration number and use it, or use an expired registration number, in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

(6) Any advertising by a person, firm, or corporation soliciting work as a contractor when that person, firm, or corporation is not registered pursuant to this chapter is a violation of this chapter.

(7)(a) The finding of a violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, shall subject the person committing the violation to a penalty of not more than ~~(five)~~ ten thousand dollars as determined by the director.

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error.

Sec. 9. RCW 18.27.114 and 1997 c 314 s 12 are each amended to read as follows:

(1) Any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one

thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the following disclosure statement in substantially the following form using lower case and upper case twelve-point and bold type where appropriate, prior to starting work on the project:

"NOTICE TO CUSTOMER

~~((This contractor is registered with the state of Washington, registration no., as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. The expiration date of this contractor's registration is This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries.))~~

This contractor is registered with the state of Washington, registration no. and has posted with the state a bond or deposit of for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of this contractor's registration is

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION, YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.

The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the state Department of Labor and Industries."

(2) A contractor subject to this section shall notify any consumer to whom notice is required under subsection (1) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(3) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) of this section.

(4) This section does not apply to contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

(5) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(6) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section. As necessary, the department shall periodically update these education materials.

Sec. 10. RCW 18.27.310 and 1993 c 454 s 10 are each amended to read as follows:

(1) The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the ~~((notice was issued))~~ work was performed, the defendant was registered by the department, without suspension, or was exempt from registration.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact

and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

Sec. 11. RCW 18.27.320 and 1993 c 454 s 11 are each amended to read as follows:

The administrative law judge shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered, without suspension, at the time the ~~((notice of infraction was issued))~~ work was performed.

NEW SECTION. **Sec. 12.** A new section is added to chapter 18.27 RCW to read as follows:

(1) The department shall use reasonable means, including working cooperatively with construction industry, financial institution, local government, consumer, media, and other interested organizations and individuals, to increase:

(a) Consumer awareness of the requirements of this chapter and the methods available to consumers to protect themselves against loss; and

(b) Contractor awareness of the obligations imposed on contractors by this chapter.

(2) The department shall accomplish the tasks listed in this section within existing resources, including but not limited to fees charged under RCW 18.27.075.

NEW SECTION. **Sec. 13.** A new section is added to chapter 18.27 RCW to read as follows:

(1) The legislature finds that it is contrary to public policy to allow unregistered contractors to continue doing business illegally.

(2) The department of labor and industries, the employment security department, and the department of revenue shall establish an unregistered contractors enforcement team. The team shall develop a written plan to coordinate the activities of the participating agencies to enforce the state's contractor registration laws and rules and other state laws and rules deemed appropriate by the team. In developing the plan, the team shall seek the input and advice of interested stakeholders who support the work of the team.

(3) The director or the director's designee shall call the initial meeting of the unregistered contractors enforcement team by September 1, 2001. The team shall complete the plan and forward it to the appropriate standing committees of the legislature and to the departments that contribute members to the team by December 1, 2001.

(4) The department of labor and industries, the employment security department, and the department of revenue shall accomplish the tasks listed in this section within existing resources, including but not limited to fees charged under RCW 18.27.075.

Sec. 14. RCW 18.27.075 and 1983 c 74 s 2 are each amended to read as follows:

The department (~~may not set~~) shall charge a fee (~~higher than fifty~~) of one hundred dollars for issuing or renewing a certificate of registration during the 2001-2003 biennium. The department shall revise this amount at least once every two years for the purpose of recognizing economic changes as reflected by the fiscal growth factor under chapter 43.135 RCW.

Passed the Senate April 16, 2001.

Passed the House April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 160

[Engrossed Senate Bill 5374]

UNUSED PROPERTY MERCHANTS—PROHIBITED SALES

AN ACT Relating to the imposition of criminal penalties and sanctions for the unauthorized sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices; adding a new chapter to Title 19 RCW; and prescribing penalties.

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)(a) "Unused property market" means any event:

(i) At which two or more persons offer personal property for sale or exchange and at which (A) these persons are charged a fee for sale or exchange of personal property or (B) prospective buyers are charged a fee for admission to the area at which personal property is offered or displayed for sale or exchange; or

(ii) Regardless of the number of persons offering or displaying personal property or the absence of fees, at which personal property is offered or displayed for sale or exchange if the event is held more than six times in any twelve-month period.

(b) "Unused property market" is interchangeable with and applicable to swap meet, indoor swap meet, flea market, or other similar terms, regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(c) "Unused property market" does not include:

(i) An event that is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or

otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event; or

(ii) An event at which all of the personal property offered for sale or displayed is new, and all persons selling or exchanging personal property, or offering or displaying personal property for sale or exchange, are manufacturers or authorized representatives of manufacturers or distributors.

(2) "Unused property merchant" means any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail, except a person who offers five or fewer items of the same new and unused merchandise for sale or exchange at an unused property market.

(3) "Baby food" or "infant formula" means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under the age of two years.

(4) "Nonprescription drug," which may also be referred to as an over-the-counter drug, means any nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and required to be properly labeled and unadulterated in accordance with the requirements of the state food and drug laws and the federal food, drug, and cosmetic act. "Nonprescription drug" does not include herbal products, dietary supplements, botanical extracts, or vitamins.

(5) "Medical device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label "caution: federal law requires dispensing by or on the order of a physician"; or which is defined by federal law as a medical device and is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in man or animals or is intended to affect the structure or any function of the body of man or animals, which does not achieve any of its principal intended purposes through chemical action within or on the body of man or animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

NEW SECTION. Sec. 2. No unused property merchant shall offer at an unused property market for sale or knowingly permit the sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices. This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product, as long as the authorization is not false, fraudulent, or fraudulently obtained.

NEW SECTION. Sec. 3. This chapter does not apply to:

- (1) Business conducted in any industry or association trade show; or
- (2) Anyone who sells by sample, catalog, or brochure for future delivery.

NEW SECTION. Sec. 4. (1) A first violation of this chapter is a misdemeanor.

(2) A second violation of this chapter within five years is a gross misdemeanor.

(3) A third or subsequent violation of this chapter within five years is a class C felony.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act constitute a new chapter in Title 19 RCW.

Passed the Senate April 17, 2001.

Passed the House April 6, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 161

[Senate Bill 5392]

EMANCIPATION OF MINORS

AN ACT Relating to emancipation of minors; and amending RCW 13.64.040.

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

Sec. I. RCW 13.64.040 and 1993 c 294 s 4 are each amended to read as follows:

(1) The hearing on the petition shall be before a (~~judge~~) judicial officer, sitting without a jury. Prior to the presentation of proof the (~~judge~~) judicial officer shall determine whether: (~~((+))~~) (a) The petitioning minor understands the consequences of the petition regarding his or her legal rights and responsibilities; (~~((2))~~) (b) a guardian ad litem should be appointed to investigate the allegations of the petition and file a report with the court.

(2) For the purposes of this section, the term "judicial officer" means: (a) A judge; (b) a superior court commissioner of a unified family court if the county operates a unified family court; or (c) any superior court commissioner if the county does not operate a unified family court. The term does not include a judge pro tempore.

Passed the Senate April 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 162

[Senate Bill 5393]

TRUANCY RECORDS

AN ACT Relating to truancy records; and amending RCW 28A.225.035 and 13.50.100.

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

Sec. 1. RCW 28A.225.035 and 1999 c 319 s 3 are each amended to read as follows:

(1) A petition for a civil action under RCW 28A.225.030 or 28A.225.015 shall consist of a written notification to the court alleging that:

(a) The child has unexcused absences during the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

(2) The petition shall set forth the name, ~~((age))~~ date of birth, school, ~~((and residence))~~ address, gender, race, and ethnicity of the child and the names and ~~((residence))~~ addresses of the child's parents.

(3) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter and provide information about what the court might order under RCW 28A.225.090.

(4) When a petition is filed under RCW 28A.225.030 or 28A.225.015, the juvenile court shall schedule a hearing at which the court shall consider the petition, or if the court determines that a referral to an available community truancy board would substantially reduce the child's unexcused absences, the court may refer the case to a community truancy board under the jurisdiction of the juvenile court.

(5) If a referral is made to a community truancy board, the truancy board must meet with the child, a parent, and the school district representative and enter into an agreement with the petitioner and respondent regarding expectations and any actions necessary to address the child's truancy within thirty days of the referral. If the petition is based on RCW 28A.225.015, the child shall not be required to attend and the agreement under this subsection shall be between the truancy board, the school district, and the child's parent. The agreement shall be presented to the juvenile court for its approval.

(6) The court shall approve the agreement by order or schedule a hearing. The court may, if the school district and community truancy board agree, permit the truancy board to provide continued supervision over the student, or parent if the petition is based on RCW 28A.225.015, and report on compliance with the order.

(7) If the truancy board fails to reach an agreement, the truancy board shall return the case to the juvenile court for a hearing.

(8) Notwithstanding the provisions in subsection (4) of this section, a hearing shall not be required if other actions by the court would substantially reduce the child's unexcused absences. When a juvenile court hearing is held, the court shall:

(a) Separately notify the child, the parent of the child, and the school district of the hearing;

(b) Notify the parent and the child of their rights to present evidence at the hearing; and

(c) Notify the parent and the child of the options and rights available under chapter 13.32A RCW.

(9) The court may require the attendance of the child if eight years old or older, the parents, and the school district at any hearing on a petition filed under RCW 28A.225.030.

(10) A school district is responsible for determining who shall represent the school district at hearings on a petition filed under RCW 28A.225.030 or 28A.225.015.

(11) The court may permit the first hearing to be held without requiring that either party be represented by legal counsel, and to be held without a guardian ad litem for the child under RCW 4.08.050. At the request of the school district, the court shall permit a school district representative who is not an attorney to represent the school district at any future hearings.

(12) If the allegations in the petition are established by a preponderance of the evidence, the court shall grant the petition and enter an order assuming jurisdiction to intervene for the period of time determined by the court, after considering the facts alleged in the petition and the circumstances of the juvenile, to most likely cause the juvenile to return to and remain in school while the juvenile is subject to this chapter. In no case may the order expire before the end of the school year in which it is entered.

(13) If the court assumes jurisdiction, the school district shall regularly report to the court any additional unexcused absences by the child.

(14) Community truancy boards and the courts shall coordinate, to the extent possible, proceedings and actions pertaining to children who are subject to truancy petitions and at-risk youth petitions in RCW 13.32A.191 or child in need of services petitions in RCW 13.32A.140.

(15) If after a juvenile court assumes jurisdiction in one county the child relocates to another county, the juvenile court in the receiving county shall, upon the request of a school district or parent, assume jurisdiction of the petition filed in the previous county.

Sec. 2. RCW 13.50.100 and 2000 c 162 s 18 are each amended to read as follows:

(1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) 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 of

supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide ((juvenile-court)) judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) A contracting agency or service provider of the department of social and health services that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombudsman information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(5) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(6) A juvenile or his or her parent denied access to any records following an agency determination under subsection (5) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsections (5)(a) and (b) of this section.

(7) The person making a motion under subsection (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (5) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(9) No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020(12) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider.

Passed the Senate April 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 163

[Substitute Senate Bill 5442]

SALMON FISHING GEAR

AN ACT Relating to salmon fishing gear; amending RCW 77.50.030 and 77.70.180; and adding a new section to chapter 77.50 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 77.50 RCW to read as follows:

It is the intent of the legislature to ensure that a sustainable level of salmon is made available for harvest for commercial fishers in the state. Maintaining consistent harvest levels has become increasingly difficult with the listing of salmonid species under the federal endangered species act. Without a stable level of harvest, fishers cannot develop niche markets that maximize the economic value of the harvest. New tools and approaches are needed by fish managers to bring increased stability to the fishing industry.

In the short term, it is the legislature's intent to provide managers with tools to assure that commercial harvest of targeted stocks can continue and expand under the constraints of the federal endangered species act. There are experimental types of commercial fishing gear that could allow fishers to stabilize harvest levels by selectively targeting healthy salmon stocks.

For the longer term, the department of fish and wildlife shall proceed with changes to the operation of certain hatcheries in order to stabilize harvest levels by allowing naturally spawning and hatchery origin fish to be managed as a single

run. Scientific information from such hatcheries would guide the department's approach to reducing the need to mass mark hatchery origin salmon where appropriate.

Sec. 2. RCW 77.50.030 and 1998 c 190 s 77 are each amended to read as follows:

(1) A person shall not use, operate, or maintain a gill net which exceeds ~~((+500))~~ one thousand five hundred feet in length or a drag seine in the waters of the Columbia river for catching salmon.

(2) A person shall not construct, install, use, operate, or maintain within state waters a pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or fixed appliance for catching salmon or steelhead except under the authority of a trial or experimental fishery permit, when an emerging commercial fishery has been designated allowing use of one or more of these gear types. The director must consult with the commercial fishing interests that would be affected by the trial or experimental fishery permit. The director may authorize the use of this gear for scientific investigations.

(3) The department, in coordination with the Oregon department of fish and wildlife, shall adopt rules to regulate the use of monofilament in gill net webbing on the Columbia river.

Sec. 3. RCW 77.70.180 and 1993 c 340 s 43 are each amended to read as follows:

(1) Within five years after adopting rules to govern the number and qualifications of participants in an emerging commercial fishery, the director shall provide to the appropriate senate and house of representatives committees a report which outlines the status of the fishery and a recommendation as to whether a separate commercial fishery license, license fee, or limited harvest program should be established for that fishery.

(2) For any emerging commercial fishery designated under RCW 77.50.030, the report must also include:

(a) Information on the extent of the program, including to what degree mass marking and supplementation programs have been utilized in areas where emerging commercial fisheries using selective fishing gear have been authorized;

(b) Information on the benefit provided to commercial fishers including information on the effectiveness of emerging commercial fisheries using selective fishing gear in providing expanded fishing opportunity within mixed stocks of salmon;

(c) Information on the effectiveness of selective fishing gear in minimizing postrelease mortality for nontarget stocks, harvesting fish so that they are not damaged by the gear, and aiding the creation of niche markets; and

(d) Information on the department's efforts at operating hatcheries in an experimental fashion by managing wild and hatchery origin fish as a single run as an alternative to mass marking and the utilization of selective fishing gear. The department shall consult with commercial fishers, recreational fishers, federally

recognized treaty tribes with a fishing right, regional fisheries enhancement groups, and other affected parties to obtain their input in preparing the report under this subsection (2).

Passed the Senate April 16, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 164

[Substitute Senate Bill 5468]

CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

AN ACT Relating to the chemical dependency disposition alternative; and amending RCW 13.40.165.

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

Sec. 1. RCW 13.40.165 and 1997 c 338 s 26 are each amended to read as follows:

(1) The purpose of this disposition alternative is to ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW 70.96A.520. The court must consider eligibility for the chemical dependency disposition alternative when a 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, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent or substance abusing, may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW to determine if the youth is chemically dependent ((and amenable to treatment)) or substance abusing. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(2) 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 drug-alcohol problems and previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(3) 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) Whether inpatient and/or outpatient treatment is recommended;
- (b) Availability of appropriate treatment;

(c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(d) Anticipated length of treatment; and

(e) Recommended crime-related prohibitions(~~;~~ and

~~(f) Whether the respondent is amenable to treatment).~~

(4) The court on its own motion may order, or on a motion by the state or the respondent 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))~~ requesting party shall pay the cost of any examination ordered under this subsection (~~((4) or subsection (1) of this section)~~) unless the requesting party is the offender and the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(5)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this chemical dependency disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this chemical dependency disposition alternative is appropriate, then the court shall impose the standard range for the offense, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol treatment and/or inpatient drug/alcohol treatment. For purposes of this section, ~~((the sum of confinement time and))~~ inpatient treatment may not exceed ninety days. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community service, and payment of legal financial obligations and restitution.

(6) The drug/alcohol treatment provider shall submit monthly 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.

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 impose sanctions pursuant to RCW 13.40.200 or revoke the suspension and order execution 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.

(7) 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 offense charged.

(8) 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.

(9) 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.

(10) A disposition under this section is not appealable under RCW 13.40.230.

Passed the Senate April 18, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 165

[Engrossed Substitute House Bill 1371]

EMERGENCY SERVICE PERSONNEL KILLED IN THE LINE OF DUTY—SURVIVING SPOUSES AND DEPENDENT CHILDREN

AN ACT Relating to participation in health care authority insurance plans and contracts by surviving spouses and dependent children of emergency service personnel killed in the line of duty; amending RCW 41.05.011 and 41.05.080; reenacting and amending RCW 41.05.011; providing an effective date; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 41.05.011 and 2000 c 230 § 3 are each amended to read as follows:

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

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the

executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40) or the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010.

(14) "Emergency service personnel killed in the line of duty" means law enforcement officers and fire fighters as defined in RCW 41.26.030, and reserve officers and fire fighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

Sec. 2. RCW 41.05.011 and 2000 c 247 s 604 and 2000 c 230 s 3 are each reenacted and amended to read as follows:

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

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such

employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(14) "Emergency service personnel killed in the line of duty" means law enforcement officers and fire fighters as defined in RCW 41.26.030, and reserve officers and fire fighters as defined in RCW 41.24.010 who die as a result of

injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

Sec. 3. RCW 41.05.080 and 1996 c 39 s 22 are each amended to read as follows:

(1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, or employees of county, municipal, or other political subdivisions covered by this chapter who are retired may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment;

(c) Surviving spouses and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022.

(3) Rates charged to surviving spouses of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) Surviving spouses and dependent children of emergency service personnel killed in the line of duty and retired or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office.

NEW SECTION. Sec. 4. Section 1 of this act expires March 1, 2002.

NEW SECTION. Sec. 5. Section 2 of this act takes effect March 1, 2002.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and except for section 2 of this act takes effect

immediately. This act applies to surviving spouses and dependent children of emergency service personnel killed in the line of duty on or after January 1, 1998.

Passed the House April 16, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 166

[House Bill 1066]

CRIMINAL JUSTICE TRAINING COMMISSION—TRAINING FACILITIES

AN ACT Relating to the authority of the criminal justice training commission to own and operate training facilities; amending RCW 43.101.080; and creating a new section.

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

Sec. 1. RCW 43.101.080 and 1982 c 124 s 1 are each amended to read as follows:

The commission shall have all of the following powers:

- (1) To meet at such times and places as it may deem proper;
- (2) To adopt any rules and regulations as it may deem necessary;
- (3) To contract for services, as it deems necessary in order to carry out its duties and responsibilities;
- (4) To cooperate with and secure the cooperation of any department, agency, or instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;
- (5) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it;
- (6) To select and employ an executive director, and to empower him to perform such duties and responsibilities as it may deem necessary;
- (7) To assume legal, fiscal, and program responsibility for all training conducted by the commission;
- (8) To establish, by rule and regulation, standards for the training of criminal justice personnel where such standards are not prescribed by statute;
- (9) To own, establish, and operate, or to contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel and to purchase, lease, or otherwise acquire, subject to the approval of the department of general administration, a training facility or facilities necessary to the conducting of such programs (~~— PROVIDED, That the commission shall not have the power to invest any moneys received by it from any source for the purchase of a training facility without prior approval of the legislature~~);
- (10) To establish, by rule and regulation, minimum curriculum standards for all training programs conducted for employed criminal justice personnel;

(11) To review and approve or reject standards for instructors of training programs for criminal justice personnel, and to employ personnel on a temporary basis as instructors without any loss of employee benefits to those instructors;

(12) To direct the development of alternative, innovate, and interdisciplinary training techniques;

(13) To review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards recommended by the training standards and education boards;

(14) To allocate financial resources among training and education programs conducted by the commission;

(15) To allocate training facility space among training and education programs conducted by the commission;

(16) To issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;

(17) To provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;

(18) To establish rules and regulations recommended by the training standards and education boards prescribing minimum standards relating to physical, mental and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision.

All rules and regulations adopted by the commission shall be adopted and administered pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

NEW SECTION. Sec. 2. The legislature authorizes the department of general administration to transfer the Washington state training and conference center located at 19010 First Avenue, Burien, Washington, 98148, to the criminal justice training commission.

Passed the House March 9, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 167

[House Bill 1062]

PEACE OFFICERS—CERTIFICATION

AN ACT Relating to certification of peace officers; amending RCW 43.101.010; adding new sections to chapter 43.101 RCW; and providing an effective date.

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

Sec. I. RCW 43.101.010 and 1981 c 132 s 2 are each amended to read as follows:

When used in this chapter:

(1) The term "commission" means the Washington state criminal justice training commission.

(2) The term "boards" means the education and training standards boards, the establishment of which are authorized by this chapter.

(3) The term "criminal justice personnel" means any person who serves in a county, city, state, or port commission agency engaged in crime prevention, crime reduction, or enforcement of the criminal law.

(4) The term "law enforcement personnel" means any public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipal, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas. For the purposes of this subsection "primary function" means that function to which the greater allocation of resources is made.

(5) The term "correctional personnel" means any employee or volunteer who by state, county, municipal, or combination thereof, statute has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of those individuals whose civil rights have been limited in some way by legal sanction.

(6) A peace officer is "convicted" at the time a plea of guilty has been accepted, or a verdict of guilty or finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not limited to sentencing, posttrial or postfact-finding motions and appeals. "Conviction" includes a deferral of sentence and also includes the equivalent disposition by a court in a jurisdiction other than the state of Washington.

(7) "Discharged for disqualifying misconduct" means terminated from employment for: (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), (iii) the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination.

(8) A peace officer is "discharged for disqualifying misconduct" within the meaning of subsection (7) of this section under the ordinary meaning of the term and when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward,

would more likely than not have led to discharge for disqualifying misconduct within the meaning of subsection (7) of this section.

(9) When used in context of proceedings referred to in this chapter, "final" means that the peace officer has exhausted all available civil service appeals, collective bargaining remedies, and all other such direct administrative appeals, and the officer has not been reinstated as the result of the action. Finality is not affected by the pendency or availability of state or federal administrative or court actions for discrimination, or by the pendency or availability of any remedies other than direct civil service and collective bargaining remedies.

(10) "Peace officer" means any law enforcement personnel subject to the basic law enforcement training requirement of RCW 43.101.200 and any other requirements of that section, notwithstanding any waiver or exemption granted by the commission, and notwithstanding the statutory exemption based on date of initial hire under RCW 43.101.200. Commissioned officers of the Washington state patrol, whether they have been or may be exempted by rule of the commission from the basic training requirement of RCW 43.101.200, are included as peace officers for purposes of this chapter. Fish and wildlife officers with enforcement powers for all criminal laws under RCW 77.12.055 are peace officers for purposes of this chapter.

NEW SECTION. Sec. 2. (1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter. The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before the effective date of this section. Thereafter, the commission may revoke certification pursuant to this chapter.

(2) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(3) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under section 9 of this act, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission.

NEW SECTION. Sec. 3. Upon request by a peace officer's employer or on its own initiative, the commission may deny or revoke certification of any peace officer, after written notice and hearing, if a hearing is timely requested by the peace officer under section 9 of this act, based upon a finding of one or more of the following conditions:

(1) The peace officer has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;

(2) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;

(3) The peace officer has been convicted at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;

(4) The peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after the effective date of this section;

(5) The peace officer's certificate was previously issued by administrative error on the part of the commission; or

(6) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: (a) Knowingly making a materially false statement to the commission; or (b) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness.

NEW SECTION. Sec. 4. (1) A person denied a certification based upon dismissal or withdrawal from a basic law enforcement academy for any reason not also involving discharge for disqualifying misconduct is eligible for readmission and certification upon meeting standards established in rules of the commission, which rules may provide for probationary terms on readmission.

(2) A person whose certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation is eligible for certification upon meeting standards established in rules of the commission, rules which may provide for a probationary period of certification in the event of reinstatement of eligibility.

(3) A person whose certification is denied or revoked based upon a felony criminal conviction is not eligible for certification at any time.

(4) A peace officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after the revocation or denial, petition the commission for reinstatement of the certificate or for eligibility for reinstatement. The

commission shall hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in rules of the commission. If the certificate is reinstated or eligibility for certification is determined, the commission may establish a probationary period of certification.

(5) A peace officer whose certification is revoked based solely upon a criminal conviction may petition the commission for reinstatement immediately upon a final judicial reversal of the conviction. The commission shall hold a hearing on request to consider reinstatement, and the commission may allow reinstatement based on standards established in rules of the commission. If the certificate is reinstated or if eligibility for certification is determined, the commission may establish a probationary period of certification.

NEW SECTION. Sec. 5. A peace officer's certification lapses automatically when there is a break of more than twenty-four consecutive months in the officer's service as a full-time law enforcement officer. A break in full-time law enforcement service which is due solely to the pendency of direct review or appeal from a disciplinary discharge, or to the pendency of a work-related injury, does not cause a lapse in certification. The officer may petition the commission for reinstatement of certification. Upon receipt of a petition for reinstatement of a lapsed certificate, the commission shall determine under this chapter and any applicable rules of the commission if the peace officer's certification status is to be reinstated, and the commission shall also determine any requirements which the officer must meet for reinstatement. The commission may adopt rules establishing requirements for reinstatement.

NEW SECTION. Sec. 6. Upon termination of a peace officer for any reason, including resignation, the agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission. The agency of termination shall, upon request of the commission, provide such additional documentation or information as the commission deems necessary to determine whether the termination provides grounds for revocation under section 3 of this act. The commission shall maintain these notices in a permanent file, subject to section 12 of this act.

NEW SECTION. Sec. 7. In addition to its other powers granted under this chapter, the commission has authority and power to:

- (1) Adopt, amend, or repeal rules as necessary to carry out this chapter;
- (2) Issue subpoenas and administer oaths in connection with investigations, hearings, or other proceedings held under this chapter;
- (3) Take or cause to be taken depositions and other discovery procedures as needed in investigations, hearings, and other proceedings held under this chapter;
- (4) Appoint members of a hearings board as provided under section 10 of this act;
- (5) Enter into contracts for professional services determined by the commission to be necessary for adequate enforcement of this chapter;

(6) Grant, deny, or revoke certification of peace officers under the provisions of this chapter;

(7) Designate individuals authorized to sign subpoenas and statements of charges under the provisions of this chapter; and

(8) Employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter.

NEW SECTION. **Sec. 8.** A law enforcement officer or duly authorized representative of a law enforcement agency may submit a written complaint to the commission charging that a peace officer's certificate should be denied or revoked, and specifying the grounds for the charge. Filing a complaint does not make a complainant a party to the commission's action. The commission has sole discretion whether to investigate a complaint, and the commission has sole discretion whether to investigate matters relating to certification, denial of certification, or revocation of certification on any other basis, without restriction as to the source or the existence of a complaint. A person who files a complaint in good faith under this section is immune from suit or any civil action related to the filing or the contents of the complaint.

NEW SECTION. **Sec. 9.** (1) If the commission determines, upon investigation, that there is probable cause to believe that a peace officer's certification should be denied or revoked under section 3 of this act, the commission must prepare and serve upon the officer a statement of charges. Service on the officer must be by mail or by personal service on the officer. Notice of the charges must also be mailed to or otherwise served upon the officer's agency of termination and any current law enforcement agency employer. The statement of charges must be accompanied by a notice that to receive a hearing on the denial or revocation, the officer must, within sixty days of communication of the statement of charges, request a hearing before the hearings board appointed under section 10 of this act. Failure of the officer to request a hearing within the sixty-day period constitutes a default, whereupon the commission may enter an order under RCW 34.05.440.

(2) If a hearing is requested, the date of the hearing must be scheduled not earlier than ninety days nor later than one hundred eighty days after communication of the statement of charges to the officer; the one hundred eighty day period may be extended on mutual agreement of the parties or for good cause. The commission shall give written notice of hearing at least twenty days prior to the hearing, specifying the time, date, and place of hearing.

NEW SECTION. **Sec. 10.** (1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is clear, cogent, and convincing evidence.

(2) On all appeals brought under section 9 of this act, a five-member hearings panel shall both hear the case and make the commission's final administrative decision. Members of the commission or the board on law enforcement training standards and education may but need not be appointed to the hearings panels. The commission shall appoint as follows two or more panels to hear appeals from decertification actions:

(a) When an appeal is filed in relation to decertification of a Washington peace officer who is not a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) One police chief; (ii) one sheriff; (iii) two peace officers who are at or below the level of first line supervisor, who are from city or county law enforcement agencies, and who have at least ten years' experience as peace officers; and (iv) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(b) When an appeal is filed in relation to decertification of a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) Either one police chief or one sheriff; (ii) one administrator of the state patrol; (iii) one peace officer who is at or below the level of first line supervisor, who is from a city or county law enforcement agency, and who has at least ten years' experience as a peace officer; (iv) one state patrol officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(c) Persons appointed to hearings panels by the commission shall, in relation to any decertification matter on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular commission members.

(3) Where the charge upon which revocation or denial is based is that a peace officer was "discharged for disqualifying misconduct," and the discharge is "final," within the meaning of section 3(4) of this act, and the officer received a civil service hearing or arbitration hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if the hearings panel determines that the discharge occurred and was based on disqualifying misconduct; the hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the employment separation proceeding. However, the hearings panel may, in its discretion, consider additional evidence to determine whether such a discharge occurred and was based on such disqualifying misconduct. The hearings panel shall, upon written request by the subject peace officer, allow the peace officer to present additional evidence of extenuating circumstances.

Where the charge upon which revocation or denial of certification is based is that a peace officer "has been convicted at any time of a felony offense" within the meaning of section 3(3) of this act, the hearings panel shall revoke or deny

certification if it determines that the peace officer was convicted of a felony. The hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the criminal proceeding. However, the hearings panel shall, upon the panel's determination of relevancy, consider additional evidence to determine whether the peace officer was convicted of a felony.

Where the charge upon which revocation or denial is based is under section 3(1), (2), (5), or (6) of this act, the hearings panel shall determine the underlying facts relating to the charge upon which revocation or denial of certification is based.

(4) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598.

NEW SECTION. Sec. 11. The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

NEW SECTION. Sec. 12. (1) Except as provided under subsection (2) of this section, the following records of the commission are confidential and exempt from public disclosure: (a) The contents of personnel action reports filed under section 6 of this act; (b) all files, papers, and other information obtained by the commission pursuant to section 2(3) of this act; and (c) all investigative files of the commission compiled in carrying out the responsibilities of the commission under this chapter. Such records are not subject to public disclosure, subpoena, or discovery proceedings in any civil action, except as provided in subsection (5) of this section.

(2) Records which are otherwise confidential and exempt under subsection (1) of this section may be reviewed and copied: (a) By the officer involved or the officer's counsel or authorized representative, who may review the officer's file and may submit any additional exculpatory or explanatory evidence, statements, or other information, any of which must be included in the file; (b) by a duly authorized representative of (i) the agency of termination, or (ii) a current employing law enforcement agency, which may review and copy its employee-officer's file; or (c) by a representative of or investigator for the commission.

(3) Records which are otherwise confidential and exempt under subsection (1) of this section may also be inspected at the offices of the commission by a duly authorized representative of a law enforcement agency considering an application for employment by a person who is the subject of a record. A copy of records which are otherwise confidential and exempt under subsection (1) of this section may later be obtained by an agency after it hires the applicant. In all other cases under this subsection, the agency may not obtain a copy of the record.

(4) Upon a determination that a complaint is without merit, that a personnel action report filed under section 6 of this act does not merit action by the commission, or that a matter otherwise investigated by the commission does not

merit action, the commission shall purge records addressed in subsection (1) of this section.

(5) The hearings, but not the deliberations, of the hearings board are open to the public. The transcripts, admitted evidence, and written decisions of the hearings board on behalf of the commission are not confidential or exempt from public disclosure, and are subject to subpoena and discovery proceedings in civil actions.

(6) Every individual, legal entity, and agency of federal, state, or local government is immune from civil liability, whether direct or derivative, for providing information to the commission in good faith.

NEW SECTION. Sec. 13. Sections 2 through 12 and 14 of this act are each added to chapter 43.101 RCW.

NEW SECTION. Sec. 14. This act takes effect January 1, 2002.

Passed the House April 19, 2001.

Passed the Senate April 18, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 168

[Engrossed Substitute House Bill 1995]

CIVIL FORFEITURES OF PROPERTY

AN ACT Relating to civil forfeitures of property; amending RCW 69.50.505, 9A.83.030, and 69.50.520; and creating a new section.

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

Sec. 1. RCW 69.50.505 and 1993 c 487 s 1 are each amended to read as follows:

(a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.401(e);

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia;

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the

commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a *lis pendens* by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter ~~((62A.9))~~ 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The

person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. ~~((In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property.))~~ In all cases ~~((involving real property)),~~ the burden of ~~((producing evidence shall be))~~ proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture. ~~((The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency.))~~

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(g) When property is forfeited under this chapter the board or seizing law enforcement agency may:

- (1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;
- (2) Sell that which is not required to be destroyed by law and which is not harmful to the public;
- (3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or
- (4) Forward it to the drug enforcement administration for disposition.

~~((g))~~ (h)(1) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(2) Each seizing agency shall retain records of forfeited property for at least seven years.

(3) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(4) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

~~((f))~~ (j)(1) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement ~~((and education))~~ account under RCW 69.50.520.

(2) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection ~~((f))~~ (o) of this section.

(3) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

~~((f))~~ (j) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

~~((f))~~ (k) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

~~((f))~~ (l) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

~~((f))~~ (m) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which

the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

~~((m))~~ (n) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

~~((m))~~ (o) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection ~~((f))~~ (g)(2) of this section, only if:

(1) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(2) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (2) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(3) For any claim filed under (2) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

~~((o))~~ (p) The landlord's claim for damages under subsection ~~((m))~~ (o) of this section may not include a claim for loss of business and is limited to:

(1) Damage to tangible property and clean-up costs;

(2) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(3) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection ((f)) (g)(2) of this section; and

(4) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection ((h)) (i)(2) of this section.

((p)) (q) Subsections ((m)) (n) and ((o)) (p) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection ((m)) (n) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

Sec. 2. RCW 9A.83.030 and 1992 c 210 s 3 are each amended to read as follows:

(1) Proceeds traceable to or derived from specified unlawful activity or a violation of RCW 9A.83.020 are subject to seizure and forfeiture. The attorney general or county prosecuting attorney may file a civil action for the forfeiture of proceeds. Unless otherwise provided for under this section, no property rights exist in these proceeds. All right, title, and interest in the proceeds shall vest in the governmental entity of which the seizing law enforcement agency is a part upon commission of the act or omission giving rise to forfeiture under this section.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by a superior court that has jurisdiction over the property. Any agency seizing real property shall file a lis pendens concerning the property. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later. Real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant issued pursuant to RCW 69.50.502; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter.

(3) A seizure under subsection (2) of this section commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized proceeds to be served within fifteen days after the seizure on the owner of the property seized and the person in charge thereof and any person who has a known right or interest therein, including a community property interest. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property

against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the property seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The provisions of RCW 69.50.505(e) shall apply to any such hearing. The seizing law enforcement agency shall promptly return property to the claimant upon the direction of the administrative law judge or court.

(6) Disposition of forfeited property shall be made in the manner provided for in RCW 69.50.505 ~~((g))~~ (h) through ~~((i))~~ (j) and ~~((m))~~ (n).

Sec. 3. RCW 69.50.520 and 2000 2nd sp.s. c 1 s 917 are each amended to read as follows:

The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), 69.50.505~~((h))~~ (i)(1), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 1999-2001 biennium, funds from the account may also be used for costs associated with providing grants to local governments in accordance with chapter 338, Laws of 1997, the design, sitework, and construction of the special commitment center, the replacement of the department of corrections' offender-based tracking system, and for multijurisdictional narcotics task forces. After July 1, 2001, at least seven and one-half percent of expenditures from the account shall be used for providing grants to community networks under chapter 70.190 RCW by the family policy council.

***NEW SECTION.** *Sec. 4. (1) The senate and house of representatives judiciary committees shall convene a workgroup to evaluate Washington civil forfeiture laws and practices. The efforts of the workgroup shall include: An evaluation of the enacted changes to the federal civil forfeiture act and how they compare to current Washington law; an analysis of whether a requirement for a criminal conviction before civil forfeiture would raise additional constitutional issues; a comprehensive review of every civil forfeiture case that took place in Washington state under state law during the year 2000; a discussion of recommendations and issues in the Washington civil forfeiture statutes, including issues upon which the workgroup can agree and those that remain in dispute; and any other civil forfeiture issues identified by the workgroup during its deliberations.*

(2) The workgroup shall consist of sixteen members. Four members shall be from the senate, two from each caucus to be appointed by the president of the senate, and four members shall be from the house of representatives, two from each caucus to be appointed by the co-speakers of the house of representatives. The American civil liberties union, the Washington association of sheriffs and police chiefs, the Washington association of prosecuting attorneys, and the Washington association of criminal defense lawyers may appoint two representatives each to participate in the workgroup.

(3) The members of the legislature appointed to the workgroup shall be paid by the legislature under chapter 44.04 RCW. Support staff for the workgroup shall be provided by the senate committee services and the office of program research.

(4) The workgroup shall submit its findings and recommendations to the senate judiciary committee and house of representatives judiciary committee not later than December 1, 2001. The workgroup shall terminate on December 15, 2001.

*Sec. 4 was vetoed. See message at end of chapter.

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

Passed the House April 5, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 7, 2001.

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

"I am returning herewith, without my approval as to section 4, Engrossed Substitute House Bill No. 1995 entitled:

"AN ACT Relating to civil forfeitures of property;"

Engrossed Substitute House Bill No. 1995 provides needed reform to our civil forfeiture laws. This bill will provide greater protection to citizens whose property is subject to seizure by law enforcement agencies. Drug dealers should not be allowed to

benefit from their illegally gotten wealth, but we must not sacrifice citizens' rights in our efforts to fight drug trafficking.

Section 4 of the bill establishes a workgroup of the Senate and House Judiciary Committees, including legislative and non-legislative members, to evaluate Washington's civil forfeiture laws and practices, and report back to the legislative committees by December 1, 2001. I believe such a workgroup will be very useful and can continue examining the issues involved in the forfeiture laws. However, there is simply no need to establish the workgroup in statute. I urge the committees to use their inherent power to establish this workgroup, so that it can perform its intended functions within the intended time period, without enactment of a statute.

For these reasons, I have vetoed section 4 of Engrossed Substitute House Bill No. 1995.

With the exception of section 4, Engrossed Substitute House Bill No. 1995 is approved."

CHAPTER 169

[House Bill 1952]

TRANSIENT SEX OFFENDERS—REGISTRATION

AN ACT Relating to registration of transient sex offenders and kidnapping offenders; and amending RCW 9A.44.130, 4.24.550, and 36.28A.040.

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

Sec. 1. RCW 9A.44.130 and 2000 c 91 s 2 are each amended to read as follows:

(1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section. -

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are

under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve

a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person

must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within ~~((fourteen days))~~ forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. ~~((if he or she has been classified as a risk level I sex or kidnapping offender, he or she must report monthly. If he or she has been classified as a risk level II or III sex or kidnapping offender, he or she must report weekly:))~~ The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining ~~((a sex))~~ an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within ~~((fourteen days))~~ forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a minor), 9.68A.050 (dealing in depictions of minor engaged in sexually explicit conduct), 9.68A.060 (sending, bringing into state depictions of minor engaged in sexually explicit conduct), 9.68A.090 (communication with minor for immoral purposes), 9.68A.100 (patronizing juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in the second degree), as well as any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

(b) "Kidnapping offense" means the crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent.

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as

defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

Sec. 2. RCW 4.24.550 and 1998 c 220 s 6 are each amended to read as follows:

(1) Public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) The extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers,

businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; ~~((and))~~ (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; ~~and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.~~

(4) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(5) 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 risk level classification decisions or 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 in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or 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 general public.

(6) Except as may otherwise be provided by law, 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.

(7) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(8) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the department of corrections, the

department of social and health services, or the indeterminate sentence review board, the law enforcement agency or official shall notify the appropriate department or the board and submit its reasons supporting the change in classification.

Sec. 3. RCW 36.28A.040 and 2000 c 3 s 1 are each amended to read as follows:

(1) No later than (~~December 31, 2001~~) July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic state-wide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system shall be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a state-wide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other

individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the state-wide jail booking and reporting system and for the information that must be contained within the system.

At a minimum, the system shall contain:

(i) The offenses the individual has been charged with;

(ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;

(iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;

(iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged; ~~((and))~~

(v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and

(vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the state-wide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5) By January 1, 2001, the standards committee shall complete the initial standards described in subsection (4) of this section, and the standards shall be placed into a report and provided to all Washington state city and county jails, all other criminal justice agencies as defined in RCW 10.97.030, the chair of the Washington state senate human services and corrections committee, and the chair of the Washington state house of representatives criminal justice and corrections committee.

Passed the House April 13, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 170

[House Bill 2086]

SEX OFFENDERS—LIFETIME REGISTRATION

AN ACT Relating to compliance with federal standards for lifetime registration for certain sex offenders; amending RCW 9A.44.140; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature intends to amend the lifetime sex offender registration requirement so that it is narrowly tailored to meet the requirements of the Jacob Wetterling act.

Sec. 2. RCW 9A.44.140 and 2000 c 91 s 3 are each amended to read as follows:

(1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony or an offense listed in subsection (5) of this section, or a person convicted of any sex offense or kidnapping offense who has one or more prior convictions for a sex offense or kidnapping offense: Such person may only be relieved of the duty to register under subsection (3) or (4) of this section.

(b) For a person convicted of a class B felony, and the person does not have one or more prior convictions for a sex offense or kidnapping offense and the person's current offense is not listed in subsection (5) of this section: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a class C felony, and the person does not have one or more prior convictions for a sex offense or kidnapping offense and the person's current offense is not listed in subsection (5) of this section: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) The provisions of subsection (1) of this section shall apply equally to a person who has been found not guilty by reason of insanity under chapter 10.77 RCW of a sex offense or kidnapping offense.

(3)(a) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty, if the person has spent ten consecutive years in the community without being convicted of any new offenses. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (4) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and

convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(b)(i) The court may not relieve a person of the duty to register if the person has been determined to be a sexually violent predator as defined in RCW 71.09.020, or has been convicted of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after June 8, 2000.

(ii) Any person subject to (b)(i) of this subsection or subsection (5) of this section may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of any new offense.

(4) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors.

(a) The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(b) The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was under the age of fifteen if the petitioner (i) has not been adjudicated of any additional sex offenses or kidnapping offenses during the twenty-four months following the adjudication for the offense giving rise to the duty to register, and (ii) proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

This subsection shall not apply to juveniles prosecuted as adults.

(5)(a) A person who has been convicted of an aggravated offense, or has been convicted of one or more prior sexually violent offenses or criminal offenses against a victim who is a minor, as defined in (b) of this subsection may only be relieved of the duty to register under subsection (3) or (4) of this section. This provision shall apply to convictions for crimes committed on or after the effective date of this act.

(b) Unless the context clearly requires otherwise, the following definitions apply only to the federal lifetime registration requirements under this subsection:

(i) "Aggravated offense" means an adult conviction that meets the definition of 18 U.S.C. Sec. 2241, which is limited to the following:

(A) Any sex offense involving sexual intercourse or sexual contact where the victim is under twelve years of age;

(B) RCW 9A.44.040 (rape in the first degree), RCW 9A.44.073 (rape of a child in the first degree), or RCW 9A.44.083 (child molestation in the first degree);

(C) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct: RCW 9A.44.050 (rape in the second degree), RCW 9A.44.100 (indecent liberties), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), or RCW 9.68A.040 (sexual exploitation of a minor);

(D) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct, if the victim is twelve years of age or over, but under sixteen years of age and the offender is eighteen years of age or over and is more than forty-eight months older than the victim: RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), or RCW 9A.44.089 (child molestation in the third degree);

(E) A felony with a finding of sexual motivation under RCW 9.94A.127 where the victim is under twelve years of age or that is committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct;

(F) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(G) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(i)(A) through (F) of this subsection.

(ii) "Sexually violent offense" means an adult conviction that meets the definition of 42 U.S.C. Sec. 14071(a)(1)(A), which is limited to the following:

(A) An aggravated offense;

(B) An offense that is not an aggravated offense but meets the definition of 18 U.S.C. Sec. 2242, which is limited to RCW 9A.44.050(1) (b) through (f) (rape in the second degree) and RCW 9A.44.100(1) (b) through (f) (indecent liberties);

(C) A felony with a finding of sexual motivation under RCW 9.94A.127 where the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the conduct;

(D) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(ii)(A) through (D) of this subsection,

(iii) "Criminal offense against a victim who is a minor" means, in addition to any aggravated offense or sexually violent offense where the victim was under eighteen years of age, an adult conviction for the following offenses where the victim is under eighteen years of age:

(A) RCW 9A.44.060 (rape in the third degree), RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), RCW 9A.44.089 (child molestation in the third degree), RCW 9A.44.093 (sexual misconduct with a minor in the first degree), RCW 9A.44.096 (sexual misconduct with a minor in the second degree), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), RCW 9.68A.040 (sexual exploitation of a minor), RCW 9.68A.090 (communication with a minor for immoral purposes), or RCW 9.68A.100 (patronizing a juvenile prostitute);

(B) RCW 9A.40.020 (kidnapping in the first degree), RCW 9A.40.030 (kidnapping in the second degree), or RCW 9A.40.040 (unlawful imprisonment), where the victim is a minor and the offender is not the minor's parent;

(C) A felony with a finding of sexual motivation under RCW 9.94A.127 where the victim is a minor;

(D) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(iii)(A) through (D) of this subsection,

(6) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

((6)) (7) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130.

(8) For purposes of determining whether a person has been convicted of more than one sex offense, failure to register as a sex offender or kidnapping offender is not a sex or kidnapping offense.

Passed the House April 13, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 171

[House Bill 1692]

PERJURY

AN ACT Relating to the crime of perjury; reenacting RCW 9A.72.010 and 9A.72.030; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting, without changes, legislation relating to the crime of perjury, as amended in sections 30 and 31, chapter 285, Laws of 1995.

Sec. 2. RCW 9A.72.010 and 1995 c 285 s 30 are each reenacted to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by

law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

Sec. 3. RCW 9A.72.030 and 1995 c 285 s 31 are each reenacted to read as follows:

(1) A person is guilty of perjury in the second degree if, in an examination under oath under the terms of a contract of insurance, or with intent to mislead a public servant in the performance of his or her duty, he or she makes a materially false statement, which he or she knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a class C felony.

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 16, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 172

[House Bill 1613]

UNIDENTIFIED HUMAN REMAINS—SUBMISSION OF DENTAL RECORDS

AN ACT Relating to submission of unidentified persons information; and amending RCW 68.50.330.

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

Sec. I. RCW 68.50.330 and 1984 c 17 s 19 are each amended to read as follows:

If the county coroner or county medical examiner investigating a death is unable to establish the identity of a body or human remains by visual means, fingerprints, or other identifying data, he or she shall have a qualified dentist, as determined by the county coroner or county medical examiner, carry out a dental examination of the body or human remains. If the county coroner or county medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward such dental examination records within thirty days of the date the body or human remains were found to the dental identification system of the state patrol identification and criminal history section on forms supplied by the state patrol for such purposes.

The dental identification system shall act as a repository or computer center or both with respect to such dental examination records. It shall compare such dental examination records with dental records filed with it and shall determine which scoring probabilities are the highest for the purposes of identification. It shall then submit such information to the county coroner or county medical examiner who prepared and forwarded the dental examination records.

Passed the House March 9, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 173

[Engrossed Substitute House Bill 1420]

VOLUNTEER FIRE FIGHTERS—EMPLOYMENT

AN ACT Relating to discrimination of volunteer fire fighters; and adding a new section to chapter 49.12 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW to read as follows:

(1) An employer may not discharge from employment or discipline a volunteer fire fighter because of leave taken related to an alarm of fire or an emergency call.

(2)(a) A volunteer fire fighter who believes he or she was discharged or disciplined in violation of this section may file a complaint alleging the violation with the director. The volunteer fire fighter may allege a violation only by filing such a complaint within ninety days of the alleged violation.

(b) Upon receipt of the complaint, the director must cause an investigation to be made as the director deems appropriate and must determine whether this section has been violated. Notice of the director's determination must be sent to the complainant and the employer within ninety days of receipt of the complaint.

(c) If the director determines that this section was violated and the employer fails to reinstate the employee or withdraw the disciplinary action taken against the employee, whichever is applicable, within thirty days of receipt of notice of the director's determination, the volunteer fire fighter may bring an action against the employer alleging a violation of this section and seeking reinstatement or withdrawal of the disciplinary action.

(d) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations under this section and to order reinstatement of the employee or withdrawal of the disciplinary action.

(3) For the purposes of this section:

(a) "Alarm of fire or emergency call" means responding to, working at, or returning from a fire alarm or an emergency call, but not participating in training or other nonemergency activities.

(b) "Employer" means any person who had twenty or more full-time equivalent employees in the previous year.

(c) "Reinstatement" means reinstatement with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(d) "Withdrawal of disciplinary action" means withdrawal of disciplinary action with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(e) "Volunteer fire fighter" means a fire fighter who:

(i) Is not paid;

(ii) Is not already at his or her place of employment when called to serve as a volunteer, unless the employer agrees to provide such an accommodation; and

(iii) Has been ordered to remain at his or her position by the commanding authority at the scene of the fire.

(4) The legislature declares that the public policies articulated in this section depend on the procedures established in this section and no civil or criminal action may be maintained relying on the public policies articulated in this section without complying with the procedures set forth in this section, and to that end all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this section.

Passed the House March 13, 2001.

Passed the Senate April 18, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 174

[Substitute House Bill 1212]

JUVENILE RECORDS

AN ACT Relating to sealing juvenile records relating to misdemeanors, diversions, and gross misdemeanors; and amending RCW 13.50.050.

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

Sec. 1. RCW 13.50.050 and 1999 c 198 s 4 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.

(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.

(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.

(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 (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.

(12) The court shall grant the motion to seal records made pursuant to subsection (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. For misdemeanors, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction and the person is at least eighteen years old. For gross misdemeanors, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent three consecutive years in the community without committing any offense or crime that subsequently results in conviction and the person is at least eighteen years old;

(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.

(13) The person making a motion pursuant to subsection (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.

(14) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (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.

(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 (23) of this section.

(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.

(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 (23) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(18) If the court grants the motion to destroy records made pursuant to subsection (17) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (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.

(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.

(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.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (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.

(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.

(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 13, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 175

[Substitute House Bill 1471]

DIVERSIONS

AN ACT Relating to diversion; and amending RCW 13.50.050, 13.40.070, and 13.40.127.

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

Sec. 1. RCW 13.50.050 and 1999 c 198 s 4 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.

(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.

(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.

(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 (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.

(12) The court shall grant the motion to seal records made pursuant to subsection (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. For diversions, since completion of the diversion agreement, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction or diversion and the person is at least eighteen years old;

(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.

(13) The person making a motion pursuant to subsection (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.

(14) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (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.

(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 (23) of this section.

(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.

(17)(a) 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 (23) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(b) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection (17) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (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.

(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.

(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.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (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.

(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.

(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.

Sec. 2. RCW 13.40.070 and 1997 c 338 s 17 are each amended to read as follows:

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion

to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.440(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion (~~(contracts)~~) agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient

written notice to the juvenile court that the prosecutor will not review such complaints.

(10) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims.

Sec. 3. RCW 13.40.127 and 1997 c 338 s 21 are each amended to read as follows:

(1) A juvenile is eligible for deferred disposition unless he or she:

- (a) Is charged with a sex or violent offense;
- (b) Has a criminal history which includes any felony;
- (c) Has a prior deferred disposition or deferred adjudication; or
- (d) Has two or more ~~((diversions))~~ adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7) A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(9) At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice.

Passed the House April 13, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 176

[House Bill 1036]

ALIEN BANKS—INVESTIGATIONS

AN ACT Relating to the investigation of alien banks; and amending RCW 30.42.140.

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

Sec. 1. RCW 30.42.140 and 1994 c 92 s 91 are each amended to read as follows:

The director, without previous notice, shall visit the office of an alien bank doing business in this state pursuant to this chapter at least once ~~((in each year))~~ every eighteen months, and more often if necessary, for the purpose of making a full investigation into the condition of such office, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director or member of its governing body, officer, employee, or agent of such alien bank or office. The director shall make such other full or partial examination as he or she deems necessary. The director shall collect, from each alien bank for each examination of the conditions of its office in this state, the estimated actual cost of such examination.

Passed the House February 20, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 177

[House Bill 1211]

FINANCIAL SERVICES REGULATION FUND

AN ACT Relating to creating the financial services regulation fund; amending RCW 43.320.080, 43.320.110, 18.44.121, 19.146.205, 19.146.228, 19.146.280, 31.35.050, 31.35.080, 31.40.070, 31.40.110, 31.45.030, 31.45.050, and 31.45.077; creating a new section; repealing RCW 43.320.120 and 43.320.130; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 43.320.080 and 1993 c 472 s 22 are each amended to read as follows:

The director of financial institutions shall maintain an office at the state capitol, but may with the consent of the governor also maintain branch offices at other convenient business centers in this state. The director shall keep books of record of all moneys received or disbursed by the director into or from the ~~((banking examination fund, the credit union examination fund, the securities))~~ financial services regulation fund, and any other accounts maintained by the department of financial institutions.

Sec. 2. RCW 43.320.110 and 1995 c 238 s 9 are each amended to read as follows:

There is created a local fund known as the "~~((banking examination))~~ financial services regulation fund" which shall consist of all moneys received by the divisions of the department of financial institutions ~~((from banks, savings banks, foreign bank branches, savings and loan associations, consumer loan companies, check cashers and sellers, trust companies and departments, and escrow agents)),~~ except for the division of securities which shall deposit thirteen percent of all moneys received, and which shall be used for the purchase of supplies and necessary equipment ~~((and));~~ the payment of salaries, wages, and utilities(,); ~~the establishment of reserves;~~ and other incidental costs required for the proper regulation of ~~((these companies))~~ individuals and entities subject to regulation by the department. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

Sec. 3. RCW 18.44.121 and 1999 c 30 s 10 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 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 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 an escrow agent license or of an escrow officer license lost, stolen, destroyed, or for replacement.

(4) A fee for providing 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.

In 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)) financial services regulation fund.

Sec. 4. RCW 19.146.205 and 1997 c 106 s 9 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal

stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) The director may exchange fingerprint data with the federal bureau of investigation.

(3) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the ~~((banking examination))~~ financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is

not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection.

Sec. 5. RCW 19.146.228 and 1997 c 106 s 13 are each amended to read as follows:

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the ~~((banking examination))~~ financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

Sec. 6. RCW 19.146.280 and 1997 c 106 s 20 are each amended to read as follows:

(1) There is established the mortgage brokerage commission consisting of five commission members who shall act in an advisory capacity to the director on mortgage brokerage issues.

(2) The director shall appoint the members of the commission, weighing the recommendations from professional organizations representing mortgage brokers. At least three of the commission members shall be mortgage brokers licensed under this chapter and at least one shall be exempt from licensure under RCW 19.146.020(1)(f). No commission member shall be appointed who has had less than five years' experience in the business of residential mortgage lending. In addition, the director or a designee shall serve as an ex officio, nonvoting member of the commission. Voting members of the commission shall serve for two-year terms with three of the initial commission members serving one-year terms. The department shall provide staff support to the commission.

(3) The commission may establish a code of conduct for its members. Any commissioner may bring a motion before the commission to remove a commissioner for failing to conduct themselves in a manner consistent with the code of conduct. The motion shall be in the form of a recommendation to the director to dismiss a specific commissioner and shall enumerate causes for doing so. The commissioner in question shall recuse himself or herself from voting on any such motion. Any such motion must be approved unanimously by the remaining four commissioners. Approved motions shall be immediately transmitted to the director for review and action.

(4) Members of the commission shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. All costs and expenses associated with the commission shall be paid from the ~~((banking examination))~~ financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all costs and expenses shall be paid from the consumer services account.

(5) The commission shall advise the director on the characteristics and needs of the mortgage brokerage profession.

(6) The department, in consultation with other applicable agencies of state government, shall conduct a continuing review of the number and type of consumer complaints arising from residential mortgage lending in the state. The department shall report its findings to the senate committee on financial institutions and house of representatives committee on financial institutions and insurance along with recommendations for any changes in the licensing requirements of this chapter, biennially by December 1st of each even-numbered year.

Sec. 7. RCW 31.35.050 and 1994 c 92 s 254 are each amended to read as follows:

(1) The director is authorized to charge a fee for the estimated direct and indirect costs for examination and supervision by the director of an agricultural lender or a subsidiary of an agricultural lender. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) All such fees shall be deposited in the (~~banking examination~~) financial services regulation fund and administered consistent with the provisions of RCW 43.320.110.

Sec. 8. RCW 31.35.080 and 1994 c 92 s 257 are each amended to read as follows:

(1) The director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the director on any form required by the director or during any examination; or

(c) Prevention of fraud and undue influence within an agricultural lender.

(2) A violation of any provision of this chapter or any rule of the director adopted under this chapter by an agent, employee, officer, or director of the agricultural lender shall be punishable by a fine, established by the director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. All fines shall be credited to the (~~banking examination~~) financial services regulation fund.

(3) The director may issue and serve upon an agricultural lender a notice of charges if, in the opinion of the director, the agricultural lender is violating or has violated the law, rule, or any condition imposed in writing by the director or any written agreement made by the director.

(a) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the agricultural lender. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the director at the request of the agricultural lender.

Unless the agricultural lender appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of consent or if, upon the record made at the hearing, the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the agricultural lender an order to cease and desist from the violation or practice. The order may require the agricultural lender and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the agricultural lender to take affirmative action to correct the conditions resulting from the violation or practice.

(b) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the agricultural lender concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

Sec. 9. RCW 31.40.070 and 1994 c 92 s 266 are each amended to read as follows:

(1) The director is authorized to charge a fee for the estimated direct and indirect costs of the following:

(a) An application for a license and the investigation thereof;

(b) An application for approval to acquire control of a licensee and the investigation thereof;

(c) An application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee and the investigation thereof;

(d) An annual license;

(e) An examination by the director of a licensee or a subsidiary of a licensee. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) A fee for filing an application with the director shall be paid at the time the application is filed with the director.

(3) All such fees shall be deposited in the ~~((banking examination))~~ financial services regulation fund and administered consistent with the provisions of RCW 43.320.110.

Sec. 10. RCW 31.40.110 and 1994 c 92 s 270 are each amended to read as follows:

(1) The director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but need not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the director on any form required by the director or during any examination requested by the director; or

(c) Prevention of fraud and undue influence by a licensee.

(2) A violation of any provision of this chapter or any rule of the director adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. Each such fine shall be credited to the ((banking examination)) financial services regulation fund.

Sec. 11. RCW 31.45.030 and 1995 c 18 s 4 are each amended to read as follows:

(1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller;

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the ((banking examination)) financial services regulation fund in accordance with RCW 43.020.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is

dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. 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 licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the

superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

Sec. 12. RCW 31.45.050 and 1996 c 13 s 2 are each amended to read as follows:

(1) Each applicant and licensee shall pay to the director an investigation fee and an annual assessment fee in an amount determined by rule of the director as necessary to cover the operation of the program. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider at least the volume of business, level of risk, and

potential harm to the public related to each activity. The fees collected shall be deposited to the credit of the ~~((banking examination))~~ financial services regulation fund in accordance with RCW 43.320.110.

(2) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less than thirty days before the proposed establishing, closing, or moving of a place of business.

Sec. 13. RCW 31.45.077 and 1995 c 18 s 3 are each amended to read as follows:

(1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(3) The application shall be filed together with an investigation and supervision fee established by rule by the director. Fees collected shall be deposited to the credit of the ~~((banking examination))~~ financial services regulation fund in accordance with RCW 43.320.110.

NEW SECTION. **Sec. 14.** All funds in the banking examination fund under RCW 43.320.110, credit unions examination fund under RCW 43.320.120, and securities regulation fund under RCW 43.320.130 shall be transferred and credited to the financial services regulation fund on the effective date of this act.

NEW SECTION. **Sec. 15.** The following acts or parts of acts are each repealed:

(1) RCW 43.320.120 (Credit unions examination fund) and 1993 c 472 s 26 & 1981 c 241 s 2; and

(2) RCW 43.320.130 (Securities regulation fund) and 1993 c 472 s 27.

NEW SECTION. **Sec. 16.** 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, 2001.

Passed the House March 9, 2001.
Passed the Senate April 11, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 178

[Engrossed House Bill 1347]

STRUCTURED SETTLEMENT PROTECTION ACT

AN ACT Relating to creating the structured settlement protection act; and adding a new chapter to Title 19 RCW.

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

NEW SECTION. Sec. 1. This chapter may be known and cited as the structured settlement protection act.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Dependents" means a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

(4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(6) "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 3(5) of this act.

(8) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(9) "Periodic payments" means (a) recurring payments and (b) scheduled future lump sum payments.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code (26 U.S.C. Sec. 130), as amended.

(11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement.

(12) "Settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement.

(13) "Structured settlement" means an arrangement for periodic payment of compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2), as amended, or an arrangement for periodic payment of benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4), as amended.

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if:

(a) The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state;

(b) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(c) The structured settlement agreement is expressly governed by the laws of this state.

(17) "Terms of the structured settlement" means, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement.

(18) "Transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. However, "transfer" does not mean the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(20) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. "Transfer expenses" does not mean preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

NEW SECTION. Sec. 3. Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth:

(1) The amounts and due dates of the structured settlement payments to be transferred;

(2) The aggregate amount of such payments;

(3) The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating such discounted present value;

(4) The gross advance amount;

(5) An itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(6) The net advance amount;

(7) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

(8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

NEW SECTION. Sec. 4. A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

(3) The transfer does not contravene any applicable statute or the order of any court or other government authority.

NEW SECTION. Sec. 5. Following a transfer of structured settlement payment rights under this chapter:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(a) If the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

(b) For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this chapter;

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two, or more, transferees or assignees; and

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

NEW SECTION. Sec. 6. (1) An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(2) Not less than twenty days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 4 of this act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(a) A copy of the transferee's application;

(b) A copy of the transfer agreement;

(c) A copy of the disclosure statement required under section 3 of this act;

(d) A listing of each of the payee's dependents, together with each dependent's age;

(e) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by

submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(f) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which may not be less than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

NEW SECTION. Sec. 7. (1) The provisions of this chapter may not be waived by any payee.

(2) Any transfer agreement entered into on or after the effective date of this act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. Such a transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(3) Transfer of structured settlement payment rights do not extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (a) periodically confirming the payee's survival, and (b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(4) No payee who proposes to make a transfer of structured settlement payment rights may incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such a transfer to satisfy the conditions of this chapter.

(5) This chapter does not authorize any transfer of structured settlement payment rights in contravention of any law, nor does it imply that any transfer under a transfer agreement entered into prior to the effective date of this act is valid or invalid.

(6) Compliance with the requirements set forth in section 3 of this act and fulfillment of the conditions set forth in section 4 of this act is the sole responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act constitute a new chapter in Title 19 RCW.

Passed the House April 13, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 179

[Substitute House Bill 1792]

HOLDING COMPANY ACT FOR HEALTH CARE SERVICE CONTRACTORS AND HEALTH MAINTENANCE ORGANIZATIONS

AN ACT Relating to the holding company act for health care service contractors and health maintenance organizations; adding a new section to chapter 42.17 RCW; adding a new chapter to Title 48 RCW; prescribing penalties; and declaring an emergency.

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) "Acquisition" or "acquire" means an agreement, arrangement, or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, all or substantially all of the assets, bulk reinsurance, consolidations, affiliations, and mergers.

(2) "Affiliate" of, or person "affiliated" with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, voting rights, by contract other than a commercial contract for goods, nonmanagement services, a debt obligation which is not convertible into a right to acquire a voting security, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(a) For a for-profit person, control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. A person may file with the commissioner a disclaimer of control of a health carrier. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the control. After furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such a determination, the commissioner may:

(i) Allow a disclaimer; or

(ii) Disallow a disclaimer notwithstanding the absence of a presumption to that effect.

(b) For a nonprofit corporation organized under chapters 24.03 and 24.06 RCW, control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing a majority of voting rights of the person or the power to elect or appoint a majority of the board of directors, trustees, or other governing body of the person, unless the power is the result of an official position of, or corporate office held by, the person.

(c) Control includes either permanent or temporary control, or both.

(4) "Domestic health carrier" means a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, that is formed under the laws of this state.

(5) "Foreign health carrier" means a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, that is formed under the laws of the United States, of a state or territory of the United States other than this state, or the District of Columbia.

(6) "Health carrier holding company system" means two or more affiliated persons, one or more of which is a health care service contractor or health maintenance organization.

(7) "Health coverage business" means the business of a disability insurer authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, entering into any policy, contract, or agreement to arrange, reimburse, or pay for health care services.

(8) "Involved carrier" means an insurer, health care service contractor, or health maintenance organization, which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(9) "Person" means an individual, corporation, partnership, association, joint stock company, limited liability company, trust, unincorporated organization, similar entity, or any combination acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or personal property.

(10) "Security holder" of a specified person means one who owns a security of that person, including (a) common stock, (b) preferred stock, (c) debt obligations convertible into the right to acquire voting securities, and any other security convertible into or evidencing the right to acquire (a) through (c) of this subsection.

(11) "Subsidiary" of a specified person means an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(12) "Voting security" includes a security convertible into or evidencing a right to acquire a voting security.

NEW SECTION. Sec. 2. (1) No person may acquire control of a foreign health carrier registered to do business in this state unless a preacquisition

notification is filed with the commissioner under this section and the waiting period has expired. If a preacquisition notification is not filed with the commissioner an involved carrier may be subject to an order under subsection (3) of this section. The acquired person may file a preacquisition notification.

(a) The preacquisition notification must be in the form and contain the information prescribed by the commissioner. The commissioner may require additional material and information necessary to determine whether the proposed acquisition, if consummated, would have the effect of substantially lessening competition, or tending to create a monopoly, in the health coverage business in this state. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating his or her ability to render an informed opinion.

(h) The waiting period required under this section begins on the date the commissioner receives the preacquisition notification and ends on the earlier of the sixtieth day after the date of the receipt by the commissioner of the preacquisition notification or the termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner may require the submission of additional needed information relevant to the proposed acquisition. If additional information is required, the waiting period ends on the earlier of the thirtieth day after the commissioner has received the additional information or the termination of the waiting period by the commissioner.

(2)(a) The commissioner may enter an order under subsection (3)(a) of this section with respect to an acquisition if:

(i) The health carrier fails to file adequate information in compliance with subsection (1)(a) of this section; or

(ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency has chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition may substantially lessen competition or tend to create a monopoly in the health coverage business.

(b) If the antitrust section of the office of the attorney general undertakes a review of the proposed transaction then the attorney general shall seek input from the commissioner throughout the review.

(c) If the antitrust section of the office of the attorney general does not undertake a review of the proposed acquisition and the review is being conducted by the commissioner, then the commissioner shall seek input from the attorney general throughout the review.

(3)(a)(i) If an acquisition violates the standards of this section, the commissioner may enter an order:

(A) Requiring an involved carrier to cease and desist from doing business in this state with respect to business as a health care service contractor or health maintenance organization; or

(B) Denying the application of an acquired or acquiring carrier for a license, certificate of authority, or registration to do business in this state.

(ii) The commissioner may not enter the order unless:

(A) There is a hearing;

(B) Notice of the hearing is issued before the end of the waiting period and not less than fifteen days before the hearing; and

(C) The hearing is concluded and the order is issued no later than thirty days after the conclusion of the hearing.

Every order must be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.

(iii) An order entered under (a) of this subsection may not become final earlier than thirty days after it is issued, during which time the involved carrier may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(iv) An order under (a) of this subsection does not apply if the acquisition is not consummated.

(b) A person who violates a cease and desist order of the commissioner under (a) of this subsection and while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(i) A monetary penalty of not more than ten thousand dollars for every day of violation; or

(ii) Suspension or revocation of the person's license, certificate of authority, or registration; or

(iii) Both (b)(i) and (b)(ii) of this subsection.

(c) A carrier or other person who fails to make a filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement, is subject to a civil penalty of not more than fifty thousand dollars.

(4) An order may not be entered under subsection (3)(a) of this section if:

(a) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from more competition; or

(b) The acquisition will substantially increase the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition.

(5)(a) Sections 8 (2) and (3) and 9 of this act do not apply to acquisitions covered under this section.

(b) This section does not apply to the following:

(i) An acquisition subject to approval or disapproval by the commissioner under section 3 of this act;

(ii) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in the health coverage business in this state;

(iii) The acquisition of a person by another person when neither person is directly, nor through affiliates, primarily engaged in the business of a domestic or foreign health carrier, if preacquisition notification is filed with the commissioner in accordance with subsection (1) of this section sixty days before the proposed effective date of the acquisition. However, preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this subsection (5)(b);

(iv) The acquisition of already affiliated persons;

(v) An acquisition if, as an immediate result of the acquisition:

(A) In no market would the combined market share of the involved carriers exceed five percent of the total market;

(B) There would be no increase in any market share; or

(C) In no market would:

(I) The combined market share of the involved carriers exceed twelve percent of the total market; and

(II) The market share increase by more than two percent of the total market.

For the purpose of (b)(v) of this subsection, "market" means direct written premium in this state for a line of business as contained in the annual statement required to be filed by carriers licensed to do business in this state;

(vi) An acquisition of a health carrier whose domiciliary commissioner affirmatively finds: That the health carrier is in failing condition; there is a lack of feasible alternatives to improving such a condition; and the public benefits of improving the health carrier's condition through the acquisition exceed the public benefits that would arise from more competition, and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

NEW SECTION. Sec. 3. (1) No person may acquire control of a domestic health carrier unless the person has filed with the commissioner and has sent to the health carrier a statement containing the information required by this section and the acquisition has been approved by the commissioner as prescribed in this section.

(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following information:

(a) The name and address of the acquiring party. For purposes of this section, "acquiring party" means each person by whom or on whose behalf the acquisition of control under subsection (1) of this section is to be effected:

(i) If the acquiring party is an individual, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person's subsidiaries; any convictions of crimes during the past ten years; and a list of all individuals who are or who have been selected to become directors, trustees, or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection.

(b) The source, nature, and amount of the consideration used or to be used in effecting the acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including a pledge of assets, a pledge of the health carrier's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days before the filing of the statement. If the acquiring party and any predecessor has not had fully audited financial statements prepared during any of the preceding five years, then reviewed financial statements may be substituted for those years, except for the latest fiscal year which must be fully audited financial statements.

(d) Any plans or proposals that each acquiring party may have to liquidate the health carrier, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security or number and description of other voting rights referred to in section 1(3) of this act that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition under section 1(3) of this act, and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in section 1(3) of this act that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in section 1(3) of this act in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in section 1(3) of this act during the twelve calendar months before the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of any recommendations to purchase any security referred to in section 1(3) of this act made during the twelve calendar months before the filing of the statement, by an acquiring party, or by anyone based upon interviews with outside parties or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in section 1(3) of this act, and, if distributed, of additional soliciting material relating to the securities.

(k) The term of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation or securities referred to in section 1(3) of this act for tender, and the amount of fees, commissions, or other compensation to be paid to broker-dealers with regard to the securities.

(l) Such additional information as the commissioner may prescribe by rule as necessary or appropriate for the protection of subscribers of the health carrier or in the public interest.

If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required under (a) through (l) of this subsection must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member. If a partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information required under (a) through (l) of this subsection must be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If a material change occurs in the facts set forth in the statement filed with the commissioner and sent to the health carrier under this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the health carrier within two business days after the person learns of the change.

(3) If an offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may use those documents in furnishing the information called for by that statement.

(4) The commissioner shall approve an exchange or other acquisition of control referred to in this section within sixty days after he or she declares the statement filed under this section to be complete and if a hearing is requested by the commissioner or either party to the transaction, after holding a public hearing. Unless the commissioner declares the statement to be incomplete and requests additional information, the statement is deemed complete sixty days after receipt of the statement by the commissioner. If the commissioner declares the statement to be incomplete and requests additional information, the sixty-day time period in which the statement is deemed complete shall be tolled until fifteen days after receipt by the commissioner of the additional information. If the commissioner declares the statement to be incomplete, the commissioner shall promptly notify the person filing the statement of the filing deficiencies and shall set forth with specificity the additional information required to make the filing complete. At the hearing, the person filing the statement, the health carrier, and any person whose significant interest is determined by the commissioner to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the superior court of this state. All discovery proceedings must be concluded not later than three business days before the commencement of the public hearing.

(5)(a) The commissioner shall approve an acquisition of control referred to in subsection (1) of this section unless, after a public hearing, he or she finds that:

(i) After the change of control, the domestic health carrier referred to in subsection (1) of this section would not be able to satisfy the requirements for registration as a health carrier;

(ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency has chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition may substantially lessen competition or tend to create a monopoly in the health coverage business.

If the antitrust section of the office of the attorney general does not undertake a review of the proposed acquisition and the review is being conducted by the commissioner, then the commissioner shall seek input from the attorney general throughout the review.

If the antitrust section of the office of the attorney general undertakes a review of the proposed transaction then the attorney general shall seek input from the commissioner throughout the review. As to the commissioner, in making this determination:

(A) The informational requirements of section 2(1)(a) of this act apply;

(B) The commissioner may not disapprove the acquisition if the commissioner finds that:

(I) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from more competition; or

(II) The acquisition will substantially increase or will prevent significant deterioration in the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition;

(C) The commissioner may condition the approval of the acquisition on the removal of the basis of disapproval, as follows, within a specified period of time:

(I) The financial condition of an acquiring party is such as might jeopardize the financial stability of the health carrier, or prejudice the interest of its subscribers;

(II) The plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to subscribers of the health carrier and not in the public interest;

(III) The competence, experience, and integrity of those persons who would control the operation of the health carrier are such that it would not be in the interest of subscribers of the health carrier and of the public to permit the merger or other acquisition of control; or

(IV) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(b) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All reasonable costs of a hearing held under this section, as determined by the commissioner, including reasonable costs associated with the commissioner's use of investigatory, professional, and other necessary personnel, mailing of required notices and other information, and use of equipment or facilities, must be paid before issuance of the commissioner's order by the acquiring person.

(c) The commissioner may condition approval of an acquisition on the removal of the basis of disapproval within a specified period of time.

(6) Upon the request of a party to the acquisition the commissioner may order that this section does not apply to an offer, request, invitation, agreement, or acquisition as:

(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic health carrier; or

(b) Otherwise not comprehended within the purposes of this section.

(7) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

(b) The effectuation or an attempt to effectuate an acquisition of control of a domestic health carrier unless the commissioner has given approval.

(8) The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving that person arising out of violations of this section, and such a person has performed acts equivalent to and constituting an appointment by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such a person at the person's last known address.

NEW SECTION. Sec. 4. (1) Every health carrier registered to do business in this state that is a member of a health carrier holding company system shall register with the commissioner, except a foreign health carrier subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

(a) This section;

(b) Sections 5(1) and 6 of this act; and

(c) Either section 5(1)(b) of this act or a provision such as the following: Each registered health carrier shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

A health carrier subject to registration under this section shall register within one hundred twenty days of the effective date of this act and thereafter within fifteen days after it becomes subject to registration, and annually thereafter by May 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require a health carrier authorized to do business in the state that is a member of a health carrier holding company system, but that is not

subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by the health carrier with the regulatory authority of its domiciliary jurisdiction.

(2) A health carrier subject to registration shall file the registration statement on a form prescribed by the commissioner, containing the following current information:

(a) The capital structure, general financial condition, ownership, and management of the health carrier and any person controlling the health carrier;

(b) The identity and relationship of every member of the health carrier holding company system;

(c) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the health carrier and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the health carrier or of the health carrier by its affiliates;

(ii) Purchases, sales, or exchange of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the health carrier's assets to liability, other than subscriber contracts entered into in the ordinary course of the health carrier's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the health carrier's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the health carrier holding company system; and

(e) Other matters concerning transactions between registered health carriers and affiliates as may be included from time to time in registration forms adopted or approved by the commissioner by rule.

(3) Registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed under subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees, involving two percent or less of a health carrier's admitted assets as of the 31st day of the previous December are not material for purposes of this section.

(5) A person within a health carrier holding company system subject to registration shall provide complete and accurate information to a health carrier, where the information is reasonably necessary to enable the health carrier to comply with this chapter.

(6) The commissioner shall terminate the registration of a health carrier under this section that demonstrates that it no longer is a member of a health carrier holding company system.

(7) The commissioner may require or allow two or more affiliated health carriers subject to registration under this section to file a consolidated registration statement.

(8) The commissioner may allow a health carrier registered to do business in this state and part of a health carrier holding company system to register on behalf of an affiliated health carrier that is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(9) This section does not apply to a health carrier, information, or transaction if, and to the extent that, the commissioner by rule or order exempts the health carrier, information, or transaction from this section.

(10) A person may file with the commissioner a disclaimer of affiliation with an authorized health carrier, or a health carrier or a member of a health carrier holding company system may file the disclaimer. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the health carrier is relieved of any duty to register or report under this section that may arise out of the health carrier's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(11) Failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section.

NEW SECTION. Sec. 5. (1) Transactions within a health carrier holding company system to which a health carrier subject to registration is a party are subject to the following standards:

- (a) The terms must be fair and reasonable;
- (b) Charges or fees for services performed must be fair and reasonable;
- (c) Expenses incurred and payment received must be allocated to the health carrier in conformity with customary statutory accounting practices consistently applied;
- (d) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the nature and details

of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The health carrier's net worth after the transaction must exceed the health carrier's company action level risk-based capital. In addition, the commissioner may disapprove a transaction if the health carrier's risk-based capital net worth is less than the product of 2.5 and the health carrier's authorized control level risk-based capital and the commissioner reasonably believes that the health carrier's net worth is at risk of falling below its company action level risk-based capital due to anticipated future financial losses not reflected in the risk-based capital calculation. This subsection (1)(e) does not prohibit transactions that improve or help maintain the health carrier's net worth.

(2) The following transactions, excepting those transactions which are subject to approval by the commissioner elsewhere within this title, involving a domestic health carrier and a person in its health carrier holding company system may not be entered into unless the health carrier has notified the commissioner in writing of its intention to enter into the transaction and the commissioner does not declare the notice to be incomplete at least thirty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. Unless the commissioner declares the notice to be incomplete and requests additional information, the notice is deemed complete thirty days after receipt of the notice by the commissioner. If the commissioner declares the notice to be incomplete, the thirty-day time period in which the notice is deemed complete shall be tolled until fifteen days after the receipt by the commissioner of the additional information:

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed the lesser of (i) two months of the health carrier's annualized claims and administrative costs, (ii) five percent of the health carrier's admitted assets, or (iii) twenty-five percent of net worth, as of the 31st day of the previous December;

(b) Loans or extensions of credit to any person who is not an affiliate, if the health carrier makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the health carrier making the loans or extensions of credit, if the transactions are equal to or exceed the lesser of (i) two months of the health carrier's annualized claims and administrative costs, (ii) three percent of the health carrier's admitted assets, or (iii) twenty-five percent of net worth, as of the 31st day of the previous December;

(c) Reinsurance agreements or modifications to them in which the reinsurance premium or a change in the health carrier's liabilities equals or exceeds five percent of the health carrier's net worth, as of the 31st day of the previous December, including those agreements that may require as consideration the transfer of assets

from a health carrier to a nonaffiliate, if an agreement or understanding exists between the health carrier and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the health carrier;

(d) Management agreements, service contracts, and cost-sharing arrangements; and

(e) Other acquisitions or dispositions of assets involving more than five percent of the health carrier's admitted assets, specified by rule, that the commissioner determines may adversely affect the interests of the health carrier's subscribers.

(3) A domestic health carrier may not enter into transactions that are part of a plan or series of like transactions with persons within the health carrier holding company system if the aggregate amount of the transactions within a twelve-month period exceed the statutory threshold amount. If the commissioner determines that the separate transactions entered into over a twelve-month period exceed the statutory threshold amount, the commissioner may apply for an order as described in section 8(1) of this act.

(4) The commissioner, in reviewing transactions under subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section.

(5) If a health carrier complies with the terms of a management agreement, service contract, or cost-sharing agreement that has not been disapproved by the commissioner under subsection (2) of this section, then the health carrier is not required to obtain additional approval from the commissioner for individual transactions conducted under the terms of the management agreement, service contract, or cost-sharing agreement. The commissioner, however, retains the authority to examine the individual transactions to determine their compliance with the terms of the management agreement, service contract, or cost-sharing agreement and subsection (1) of this section.

(6) This section does not authorize or permit a transaction that, in the case of a health carrier not a member of the same health carrier holding company system, would be otherwise contrary to law.

NEW SECTION. Sec. 6. (1)(a) Subject to subsection (2) of this section, each registered health carrier shall report to the commissioner all dividends and other distributions to shareholders or members not within the ordinary course of business within five business days after their declaration and at least fifteen business days before payment and shall provide the commissioner such other information as may be required by rule.

(b) Any payment of a dividend or other distribution to shareholders or members which would reduce the net worth of the health carrier below the greater of (i) the minimum required by RCW 48.44.037 for a health care service contractor or RCW 48.46.235 for a health maintenance organization or (ii) the company action level RBC under RCW 48.43.300(9)(a) is prohibited.

(2)(a) No domestic health carrier may pay an extraordinary dividend or make any other extraordinary distribution to its shareholders or members until: (i) Thirty days after the commissioner has received sufficient notice of the declaration, unless the commissioner declares the notice to be incomplete and requests additional information in which event the thirty days shall be tolled until fifteen days after receipt by the commissioner of the additional information or thirty days after the original receipt of the notice by the commissioner, whichever is later, and the commissioner has not within that period disapproved the payment; or (ii) the commissioner has approved the payment within the thirty-day period.

(b) For purposes of this section, an extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions not within the ordinary course of business made within the period of twelve consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the lesser of: (i) Ten percent of the health carrier's net worth as of the 31st day of the previous December; or (ii) the net income of the health carrier for the twelve-month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(c) Notwithstanding any other provision of law, a health carrier may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders or members until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

(3) For the purpose of this section, "distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a health carrier to or for the benefit of its members or shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; or a distribution of indebtedness in respect to any of its shares. It does not include any remuneration to a shareholder or member made as consideration for services or items provided by such shareholder or member, including but not limited to remuneration in exchange for health care services, equipment or supplies, or administrative support services or equipment.

NEW SECTION. Sec. 7. (1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under RCW 48.44.145 relating to the examination of health care service contractors and under RCW 48.46.120 relating to the examination of health maintenance organizations, the commissioner also may order a health carrier registered under section 4 of this act to produce such records, books, or other information papers in the possession of the health carrier or its affiliates as are reasonably necessary to ascertain the

financial condition of the health carrier or to determine compliance with this title. If the health carrier fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered health carrier's expense those attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered health carrier producing for examination records, books, and papers under subsection (1) of this section are liable for and shall pay the expense of the examination in accordance with RCW 48.03.060.

(4) Chapter 48.03 RCW applies to this chapter except to the extent expressly modified by this chapter.

NEW SECTION. Sec. 8. (1) Whenever it appears to the commissioner that a health carrier or a director, officer, employee, or agent of the health carrier has committed or is about to commit a violation of this chapter or any rule or order of the commissioner under this chapter, the commissioner may apply to the superior court for Thurston county or to the court for the county in which the principal office of the health carrier is located for an order enjoining the health carrier or the director, officer, employee, or agent from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interest of the health carrier's subscribers or the public may require.

(2) No security that is the subject of an agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of a rule or order of the commissioner under this chapter may be voted at a shareholders' meeting, or may be counted for quorum purposes. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action would materially affect control of the health carrier or unless the courts of this state have so ordered. If a health carrier or the commissioner has reason to believe that a security of the health carrier has been or is about to be acquired in contravention of this chapter or of a rule or order of the commissioner under this chapter, the health carrier or the commissioner may apply to the superior court for Thurston county or to the court for the county in which the health carrier has its principal place of business to enjoin an offer, request, invitation, agreement, or acquisition made in contravention of section 3 of this act or a rule or order of the commissioner under that section to enjoin the voting of a security so acquired, to void a vote of the security already cast at a meeting of shareholders, and for such other relief as

the nature of the case and the interest of the health carrier's subscribers or the public may require.

(3) If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a rule or order of the commissioner under this chapter, the superior court for Thurston county or the court for the county in which the health carrier has its principal place of business may, on such notice as the court deems appropriate, upon the application of the health carrier or the commissioner seize or sequester voting securities of the health carrier owned directly or indirectly by the person, and issue such order with respect to the securities as may be appropriate to carry out this chapter.

(4) Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic health carriers is in this state.

(5) Subsections (2) and (3) of this section do not apply to acquisitions under section 2 of this act.

NEW SECTION. Sec. 9. (1) The commissioner may require, after notice and hearing, a health carrier failing, without just cause, to file a registration statement as required in this chapter, to pay a penalty of not more than ten thousand dollars per day. The maximum penalty under this section is one million dollars. The commissioner may reduce the penalty if the health carrier demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the health carrier. The commissioner shall transfer a fine collected under this section to the state treasurer for deposit into the general fund.

(2) Every director or officer of a health carrier holding company system who knowingly violates this chapter, or participates in, or assents to, or who knowingly permits an officer or agent of the health carrier to engage in transactions or make investments that have not been properly reported or submitted under section 4(1), 5(2), or 6 of this act, or that violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than ten thousand dollars per violation, after notice and hearing. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that a health carrier subject to this chapter, or a director, officer, employee, or agent of the health carrier, has engaged in a transaction or entered into a contract that is subject to sections 5 and 6 of this act and that would not have been approved had approval been requested, the commissioner may order the health carrier to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the health carrier to void any such contracts and restore the status quo if that action is in the best interest of the subscribers or the public.

(4) Whenever it appears to the commissioner that a health carrier or a director, officer, employee, or agent of the health carrier has committed a willful violation of this chapter, the commissioner may refer the matter to the prosecuting attorney of Thurston county or the county in which the principal office of the health carrier is located. A health carrier that willfully violates this chapter may be fined not more than one million dollars. Any individual who willfully violates this chapter may be fined in his or her individual capacity not more than ten thousand dollars, or be imprisoned for not more than three years, or both.

(5) An officer, director, or employee of a health carrier holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement, false report, or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, upon conviction thereof, shall be imprisoned for not more than three years or fined not more than ten thousand dollars or both. The officer, director, or employee upon whom the fine is imposed shall pay the fine in his or her individual capacity.

(6) This section does not apply to acquisitions under section 2 of this act.

NEW SECTION. Sec. 10. Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic health carrier as to threaten insolvency or make the further transaction of business by it hazardous to its subscribers or the public, the commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to take possession of the property of the domestic health carrier and to conduct the business of the health carrier.

NEW SECTION. Sec. 11. (1) If an order for liquidation or rehabilitation of a domestic health carrier has been entered, the receiver appointed under the order may recover on behalf of the health carrier:

(a) From a parent corporation or a holding company, a person, or an affiliate, who otherwise controlled the health carrier, the amount of distributions, other than distributions of shares of the same class of stock, paid by the health carrier on its capital stock; or

(b) A payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment, made by the health carrier or its subsidiary to a director, officer, or employee;

Where the distribution or payment under (a) or (b) of this subsection is made at anytime during the one year before the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4) of this section.

(2) No such distribution is recoverable if it is shown that when paid, the distribution was lawful and reasonable, and that the health carrier did not know and could not reasonably have known that the distribution might adversely affect the ability of the health carrier to fulfill its contractual obligations.

(3) A person who was a parent corporation, a holding company, or a person, who otherwise controlled the health carrier, or an affiliate when the distributions were paid, is liable up to the amount of distributions or payments under subsection (1) of this section the person received. A person who controlled the health carrier at the time the distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent health carrier to pay the contractual obligations of the impaired or insolvent health carrier.

(5) To the extent that a person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it under those provisions, its parent corporation, holding company, or person, who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for a resulting deficiency in the amount recovered from the parent corporation, holding company, or person, who otherwise controlled it.

NEW SECTION. Sec. 12. Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of a health carrier contrary to the interests of subscribers or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the health carrier's registration to do business in this state for such period as he or she finds is required for the protection of subscribers or the public. Such a suspension, revocation, or refusal to renew the health carrier's registration must be accompanied by specific findings of fact and conclusions of law.

NEW SECTION. Sec. 13. Confidential proprietary and trade secret information provided to the commissioner under sections 2 through 5 and 7 of this act are exempt from public inspection and copying and shall not be subject to subpoena directed to the commissioner or any person who received the confidential proprietary financial and trade secret information while acting under the authority of the commissioner. This information shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health carrier to which it pertains unless the commissioner, after giving the health carrier that would be affected by the disclosure notice and hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, members, shareholders, or the public will be served by the publication, in which event the commissioner may publish information related to the transactions or filings in the manner and time frame he or she reasonably deems appropriate and sensitive to the interest in preserving confidential proprietary and

trade secret information. The commissioner is authorized to use such documents, materials, or information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The confidentiality created by this act shall apply only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, and the insurance departments of other states.

NEW SECTION. Sec. 14. A new section is added to chapter 42.17 RCW to read as follows:

Confidential proprietary and trade secret information provided to the commissioner under sections 2 through 5 and 7 of this act are exempt from disclosure under this chapter.

NEW SECTION. Sec. 15. (1) A person aggrieved by an act, determination, rule, order, or any other action of or failure to act by the commissioner under this chapter may proceed in accordance with chapters 34.05 and 48.04 RCW.

NEW SECTION. Sec. 16. The commissioner may adopt rules to implement and administer this chapter.

NEW SECTION. Sec. 17. If an insurance company holding a certificate of authority from the commissioner under chapter 48.05 RCW is a member of both a health carrier holding company system under this chapter and an insurance holding company system under chapter 48.31B RCW, then chapter 48.31B RCW applies to the authorized insurance company.

NEW SECTION. Sec. 18. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 19. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. Sec. 20. Sections 1 through 13 and 15 through 18 of this act constitute a new chapter in Title 48 RCW.

Passed the House March 9, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 180

[House Bill 1213]

PUBLIC EMPLOYEES AND SCHOOL EMPLOYEES RETIREMENT SYSTEMS

AN ACT Relating to correcting statutes pertaining to the public employees' and school employees' retirement systems; amending RCW 41.34.060, 41.35.010, and 41.04.270; reenacting and amending RCW 41.45.061; decodifying RCW 41.54.050; and providing an effective date.

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

Sec. 1. RCW 41.45.061 and 2000 c 247 s 506 and 2000 c 230 s 2 are each reenacted and amended to read as follows:

(1) The required contribution rate for members of the plan 2 teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan 2 and 3 rates adopted under RCW 41.45.060 and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after July 1, 1996;

(c) In addition, the employee contribution rate for plan 2 shall not be increased as a result of any distributions pursuant to section 309, chapter 341, Laws of 1998 and RCW 41.31A.020.

(2) The required contribution rate for members of the school employees' retirement system plan 2 shall ~~((be fixed at the rates in effect on September 1, 2000, for members of the public employees' retirement system plan 2, subject to the following:~~

~~((a) Except as provided in (b) of this subsection, the member contribution rate shall not exceed)) equal the school employees' retirement system employer plan 2 and 3 contribution rate adopted under RCW 41.45.060 and 41.45.070((;)), except as provided in subsection (3) of this section.~~

~~((b)) (3) The member contribution rate for the school employees' retirement system plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after September 1, 2000.~~

~~((3)) (4) The required contribution rate for members of the public employees' retirement system plan 2 shall be set at the same rate as the employer combined plan 2 and plan 3 rate.~~

~~((4)) (5) The required contribution rate for members of the law enforcement officers' and fire fighters' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.~~

~~((5)) (6) The employee contribution rates for plan 2 under subsections (3) and (4) of this section shall not include any increase as a result of any distributions pursuant to RCW 41.31A.020 and 41.31A.030.~~

~~((6)) (7) The required plan 2 and 3 contribution rates for employers shall be adopted in the manner described in RCW 41.45.060.~~

Sec. 2. RCW 41.34.060 and 2000 c 247 s 404 are each amended to read as follows:

(1) Except as provided in subsection (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 (3) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan 3, investment shall be in the same portfolio as that of the teachers' retirement system combined plan 2 and 3 fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan 3, investment shall be in the same portfolio as that of the school employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(4).

(c) For members of the retirement system as provided for in chapter 41.40 RCW of plan 3, investment shall be in the same portfolio as that of the public employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(3).

(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), and (c) 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. 3. RCW 41.35.010 and 1998 c 341 s 2 are each amended to read as follows:

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

(1) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer," for plan 2 and plan 3 members, means a school district or an educational service district.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.35.030.

(6)(a) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under this (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(7) "Service" for plan 2 and plan 3 members means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.35.180. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than

seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(c) For purposes of plan 2 and 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(i) Less than eleven days equals one-quarter service credit month;

(ii) Eleven or more days but less than twenty-two days equals one-half service credit month;

(iii) Twenty-two days equals one service credit month;

(iv) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month; and

(v) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(8) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" for plan 2 and plan 3 members means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) "Regular interest" means such rate as the director may determine.

(13) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(14) "Average final compensation" for plan 2 and plan 3 members means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(16) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" for plan 2 and plan 3 members means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(20) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

~~(25) ("Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.~~

~~(26))~~ (26) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

~~((27))~~ (26) "Director" means the director of the department.

~~((28))~~ (27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

~~((29))~~ (28) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

~~((30))~~ (29) "Plan 2" means the Washington school employees' retirement system plan 2 providing the benefits and funding provisions covering persons who first became members of the public employees' retirement system on and after October 1, 1977, and transferred to the Washington school employees' retirement system under RCW 41.40.750.

~~((31))~~ (30) "Plan 3" means the Washington school employees' retirement system plan 3 providing the benefits and funding provisions covering persons who

first became members of the system on and after September 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

~~((32))~~ (31) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

~~((33))~~ (32) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

~~((34))~~ (33) "Index B" means the index for the year prior to index A.

~~((35))~~ (34) "Adjustment ratio" means the value of index A divided by index B.

~~((36))~~ (35) "Separation from service" occurs when a person has terminated all employment with an employer.

~~((37))~~ (36) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

~~((38))~~ (37) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW.

Sec. 4. RCW 41.04.270 and 1988 c 195 s 5 are each amended to read as follows:

(1) Notwithstanding any provision of chapter 2.10, 2.12, 41.26, 41.28, 41.32, ~~41.35~~, 41.40, or 43.43 RCW to the contrary, on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by said former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010.

NEW SECTION. Sec. 5. RCW 41.54.050 (Election to establish membership in public employees' retirement system) is decodified.

NEW SECTION. Sec. 6. Sections 1 and 2 of this act take effect March 1, 2002.

Passed the House March 9, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 181

[Substitute House Bill 1214]

EMPLOYEE RETIREMENT BENEFITS BOARD

AN ACT Relating to the composition and responsibilities of the employee retirement benefits board; amending RCW 41.50.086 and 41.34.130; and reenacting and amending RCW 41.50.780.

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

Sec. 1. RCW 41.50.086 and 1998 c 341 s 506 are each amended to read as follows:

(1) The employee retirement benefits board is created within the department of retirement systems.

(2) The board shall be composed of ~~((eleven))~~ twelve members appointed by the governor and one ex officio member as follows:

(a) Three members representing the public employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be two years for the retired member, one year for one active member, and three years for the remaining active member.

(b) Three members representing the teachers' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(c) Three members representing the school employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(d) Two members with experience in defined contribution plan administration. The initial term for these members shall be two years for one member and three years for the remaining member.

(e) One member representing the deferred compensation program. The member shall be a deferred compensation program participant chosen from a list of nominations submitted by organizations representing employees eligible to participate in the deferred compensation program. The initial term of appointment for this member shall be three years.

(f) The director of the department shall serve ex officio and shall be the chair of the board.

(3) After the initial appointments, members shall be appointed to three-year terms.

(4) The board shall meet at least quarterly during the calendar year, at the call of the chair.

(5) Members of the board shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060. Such travel expenses shall be reimbursed by the department from the retirement system expense fund.

(6) The board shall adopt rules governing its procedures and conduct of business.

(7) The actuary shall perform all actuarial services for the board and provide advice and support.

Sec. 2. RCW 41.50.780 and 1998 c 245 s 42 and 1998 c 116 s 12 are each reenacted and amended to read as follows:

(1) The deferred compensation principal account is hereby created in the state treasury. ~~((Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from that account over balances credited to that account shall be eliminated by transferring moneys to that account from the deferred compensation principal account.))~~

(2) The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state deferred compensation principal account and the state deferred compensation administrative account, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state deferred compensation plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign,

transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board has the full power to invest moneys in the state deferred compensation principal account and the state deferred compensation administrative account in accordance with RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the deferred compensation plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(3).

(b) Neither the employee retirement benefits 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 41.50.770(3).

(7) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account shall be transferred to this account from the deferred compensation principal account.

(8) In addition to the duties specified in this section and RCW 41.50.770, the department shall administer the salary reduction plan established in RCW 41.04.600 through 41.04.645.

(9)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section. The department shall account for and report on the investment of state deferred compensation plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of

cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds,

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

(10) The department may adopt rules necessary to carry out ~~((the purposes of))~~ its responsibilities under RCW 41.50.770 and this section.

Sec. 3. RCW 41.34.130 and 1998 c 341 s 307 are each amended to read as follows:

(1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW 43.84.150 and 43.33A.140, and cumulative investment directions received pursuant to RCW 41.34.060 and this section. In carrying out this authority the state investment board, after consultation with the employee retirement benefits board regarding any recommendations made pursuant to RCW 41.50.088~~((2))~~ (1)(b), shall provide a set of options for members to choose from for self-directed investment.

(2) All investment and operating costs of the state investment board associated with making self-directed investments shall be paid by members and recovered under procedures agreed to by the board and the state investment board pursuant to the principles set forth in RCW 43.33A.160 and 43.84.160. All other expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the board under RCW 41.50.088. With the exception of these expenses, all earnings from self-directed investments shall accrue to the member's account.

(3)~~(a)~~(i) The department shall keep or cause to be kept full and adequate accounts and records of each individual member's account. The department shall account for and report on the investment of defined contribution assets or may enter into an agreement with the state investment board for such accounting and reporting under this chapter.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 182

[Substitute House Bill 1256]

EDUCATIONAL SERVICE DISTRICTS—SUPERINTENDENT REVIEW COMMITTEES

AN ACT Relating to educational service districts' superintendent review committees; and amending RCW 28A.310.170.

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

Sec. 1. RCW 28A.310.170 and 1985 c 341 s 7 are each amended to read as follows:

(1) Every educational service district board shall employ and set the salary of an educational service district superintendent who shall be employed by a written contract for a term to be fixed by the board, but not to exceed three years, and who may be discharged for sufficient cause.

(2) There is hereby established within each educational service district an educational service district superintendent review committee. Such review committee shall be composed of a subcommittee of the board, two school district superintendents from within the educational service district selected by the educational service district board, and a representative of the state superintendent of public instruction selected by the state superintendent of public instruction.

(3) Prior to the employment by the educational service district board of a new educational service district superintendent, the review committee shall screen all applicants against the established qualifications for the position and recommend to the board a list of three or more candidates. The educational service district board shall either select the new superintendent from the list of three or more candidates ((or shall)), ask the review committee to add additional names to the list, or reject the entire list and ((request)) ask the review committee to submit three or

more additional candidates(~~and~~) for consideration. The educational service district board shall repeat this process until a superintendent is selected.

Passed the House March 9, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 183

[Substitute House Bill 1971]

SCHOOL DISTRICT PROPERTY—APPRAISAL

AN ACT Relating to allowing state certified appraisers to appraise school district properties; and amending RCW 28A.335.090 and 28A.335.120.

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

Sec. 1. RCW 28A.335.090 and 1995 c 358 s 1 are each amended to read as follows:

(1) The board of directors of each school district shall have exclusive control of all school property, real or personal, belonging to the district; said board shall have power, subject to RCW 28A.335.120, in the name of the district, to convey by deed all the interest of their district in or to any real property of the district which is no longer required for school purposes. Except as otherwise specially provided by law, and RCW 28A.335.120, the board of directors of each school district may purchase, lease, receive and hold real and personal property in the name of the district, and rent, lease or sell the same, and all conveyances of real estate made to the district shall vest title in the district.

(2) Any purchase of real property by a school district shall be preceded by a market value appraisal by a professionally designated real estate appraiser as defined in RCW 74.46.020 or by a general real estate appraiser certified under chapter 18.140 RCW who was selected by the board of directors.

Sec. 2. RCW 28A.335.120 and 1995 c 358 s 2 are each amended to read as follows:

(1) The board of directors of any school district of this state may:

(a) Sell for cash, at public or private sale, and convey by deed all interest of the district in or to any of the real property of the district which is no longer required for school purposes; and

(b) Purchase real property for the purpose of locating thereon and affixing thereto any house or houses and appurtenant buildings removed from school sites owned by the district and sell for cash, at public or private sale, and convey by deed all interest of the district in or to such acquired and improved real property.

(2) When the board of directors of any school district proposes a sale of school district real property pursuant to this section and the value of the property exceeds seventy thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two

consecutive weeks in a legal newspaper with a general circulation in the area in which the school district is located. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the school district property at the place and the day and hour fixed in the notice and admit evidence offered for and against the propriety and advisability of the proposed sale.

(3) The board of directors of any school district desiring to sell surplus real property shall publish a notice in a newspaper of general circulation in the school district. School districts shall not sell the property for at least forty-five days following the publication of the newspaper notice.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the purchase of surplus real property and to have such bids considered along with all other bids.

(5) Any sale of school district real property authorized pursuant to this section shall be preceded by a market value appraisal by a professionally designated real estate appraiser as defined in RCW 74.46.020 or a general real estate appraiser certified under chapter 18.140 RCW selected by the board of directors and no sale shall take place if the sale price would be less than ninety percent of the appraisal made by the ((professionally designated)) real estate appraiser: PROVIDED, That if the property has been on the market for one year or more the property may be reappraised and sold for not less than seventy-five percent of the reappraised value with the unanimous consent of the board.

(6) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded: PROVIDED, That the use of a licensed real estate broker will not eliminate the obligation of the board of directors to provide the notice described in this section: PROVIDED FURTHER, That the fee or commissions charged for any broker services shall not exceed seven percent of the resulting sale value for a single parcel: PROVIDED FURTHER, That any professionally designated real estate appraiser as defined in RCW 74.46.020 or a general real estate appraiser certified under chapter 18.140 RCW selected by the board to appraise the market value of a parcel of property to be sold may not be a party to any contract with the school district to sell such parcel of property for a period of three years after the appraisal.

(7) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through sale on contract terms, a real estate sales contract may be executed between the district and buyer: PROVIDED, That the terms and conditions of any such sales contract must comply with rules and regulations of the state board of education, herein authorized, governing school district real property contract sales.

Passed the House April 13, 2001.
Passed the Senate April 4, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 184

[House Bill 2126]

COLLEGE PAYMENT PROGRAMS

AN ACT Relating to college payment programs; amending RCW 28B.95.020, 28B.95.110, and 43.79A.040; adding a new section to chapter 28B.95 RCW; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 28B.95.020 and 2000 c 14 s 1 are each amended to read as follows:

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

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between July 1st and June 30th.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the board from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to section 2 of this act.

(3) "Board" means the higher education coordinating board as defined in chapter 28B.80 RCW.

(4) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the executive director of the higher education coordinating board, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(5) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(7) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. With the exception of tuition unit contracts purchased by qualified organizations as future scholarships, the beneficiary must

reside in the state of Washington or otherwise be a resident of the state of Washington at the time the tuition unit contract is accepted by the governing body.

(8) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary.

(9) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(10) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. The maximum tuition and fees charges recognized for beneficiaries enrolled in a state technical college shall be equal to the tuition and fees for the community college system.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate weighted average tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

(16) "Weighted average tuition" shall be calculated as the sum of the undergraduate tuition and services and activities fees for each four-year state institution of higher education, multiplied by the respective full-time equivalent student enrollment at each institution divided by the sum total of undergraduate full-time equivalent student enrollments of all four-year state institutions of higher education, rounded to the nearest whole dollar.

(17) "Weighted average tuition unit" is the value of the weighted average tuition and fees divided by one hundred. The weighted average is the basis upon which tuition benefits ~~((are)) may be calculated ((for graduate program enrollments and for attendance at nonstate institutions of higher education and is))~~ as the basis for any refunds provided from the program.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.95 RCW to read as follows:

(1) The committee may establish a college savings program. If such a program is established, the college savings program shall be established, in such form as may be determined by the committee, to be a qualified state tuition program as defined by the internal revenue service under section 529 of the internal revenue code, and shall be administered in a manner consistent with the Washington advanced college tuition payment program. The committee, in planning and devising the program, shall consult with the state investment board, the state treasurer, a qualified actuarial consulting firm with appropriate expertise to evaluate such plans, the legislative fiscal and higher education committees, and the institutions of higher education.

(2) Up to two hundred thousand dollars of administrative fees collected from guaranteed education tuition program participants may be applied as a loan to fund the development of a college savings program. This loan must be repaid with interest before the conclusion of the biennium in which the committee draws funds for this purpose from the advanced college tuition payment program account.

(3) If such a college savings program is established, the college savings program account is created in the custody of the state treasurer for the purpose of administering the college savings program. If created, the account shall be a discrete nontreasury account in the custody of the state treasurer. Interest earnings shall be retained in accordance with RCW 43.79A.040. Disbursements from the account, except for program administration, are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment provisions, but without appropriation.

(4) The committee, after consultation with the state investment board, shall determine the investment policies for the college savings program. Program contributions may be invested by the state investment board or the committee may contract with an investment company licensed to conduct business in this state to do the investing. The committee shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant in the college savings program.

(5) Neither the state nor any eligible educational institution may be considered or held to be an insurer of the funds or assets of the individual participant accounts in the college savings program created under this section nor may any such entity be held liable for any shortage of funds in the event that balances in the individual participant accounts are insufficient to meet the educational expenses of the institution chosen by the student for which the individual participant account was intended.

(6) The committee shall adopt rules to implement this section. Such rules shall include but not be limited to administration, investment management, promotion, and marketing; compliance with internal revenue service standards; application procedures and fees; start-up costs; phasing in the savings program and

withdrawals therefrom; deterrents to early withdrawals and provisions for hardship withdrawals; and reenrollment in the savings program after withdrawal.

(7) The committee may, at its discretion, determine to cease operation of the college savings program if it determines the continuation is not in the best interest of the state. The committee shall adopt rules to implement this section addressing the orderly distribution of assets.

Sec. 3. RCW 28B.95.110 and 2000 c 14 s 8 are each amended to read as follows:

(1) The intent of the Washington advanced college tuition payment program is to redeem tuition units for attendance at an institution of higher education. Refunds shall be issued under specific conditions that may include the following:

(a) Certification that the beneficiary, who is eighteen years of age or older, will not attend an institution of higher education, will result in a refund not to exceed the current weighted average tuition and fees in effect at the time of such certification minus a penalty at the rate established by the internal revenue service under chapter 529 of the internal revenue code. No more than one hundred tuition units may be refunded per year to any individual making this certification. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body;

(b) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of any remaining unused tuition units ~~((valued))~~ at the current ~~((weighted average tuition units))~~ value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body;

(c) If there is certification by the student of graduation or program completion, the refund shall be as great as one hundred percent of any remaining unused ~~((weighted average))~~ tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(d) If there is certification of other tuition and fee scholarships, which will cover the cost of tuition for the eligible beneficiary. The refund shall be equal to one hundred percent of the current ~~((weighted average))~~ value of tuition units, as determined by the governing body, in effect at the time of the refund request, ~~((plus))~~ less any administrative processing fees assessed by the governing body. The refund under this subsection may not exceed the value of the scholarship;

(e) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's investment, less any administrative processing fees assessed by the governing body. The value of the refund will not exceed the actual dollar value of the purchaser's contributions; and

(f) The governing body may determine other circumstances qualifying for refunds of remaining unused tuition units and may determine the value of that refund.

(2) With the exception of subsection (1)(b), (e), and (f) of this section no refunds may be made before the units have been held for two years.

Sec. 4. RCW 43.79A.040 and 2000 c 79 s 45 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 college savings program account, the~~ Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the basic health plan self-insurance reserve account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust 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.

NEW SECTION. Sec. 5. Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001.

Passed the House April 19, 2001.

Passed the Senate April 18, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 185

[Substitute House Bill 1202]

PROPERTY TAX ADMINISTRATION

AN ACT Relating to improving property tax administration by providing for consistency in taxpayer appeals to county boards of equalization; requiring the use of personal property valuation data over a three-year period to avoid abrupt changes in the state equalization ratio applied to the assessed value of property in a county; and providing a process for correcting levy errors; amending RCW 84.14.110, 84.26.130, 84.33.120, 84.33.130, 84.33.140, 84.34.035, 84.36.385, 84.36.812, 84.38.040, 84.40.038, 84.48.080, 84.40.190, and 84.48.080; reenacting and amending RCW 84.34.108; adding a new section to chapter 84.52 RCW; creating a new section; providing an effective date; and providing a contingent effective date.

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

Sec. 1. RCW 84.14.110 and 1995 c 375 s 14 are each amended to read as follows:

(1) If improvements have been exempted under this chapter, the improvements continue to be exempted and not be converted to another use for at least ten years from date of issuance of the certificate of tax exemption. If the owner intends to convert the multifamily development to another use, the owner shall notify the assessor within sixty days of the change in use. If, after a certificate of tax exemption has been filed with the county assessor the city or assessor or agent discovers that a portion of the property is changed or will be changed to a use that is other than residential or that housing or amenities no longer meet the requirements as previously approved or agreed upon by contract between the governing authority and the owner and that the multifamily housing, or a portion of the housing, no longer qualifies for the exemption, the tax exemption must be canceled and the following must occur:

(a) Additional real property tax must be imposed upon the value of the nonqualifying improvements in the amount that would normally be imposed, plus a penalty must be imposed amounting to twenty percent. This additional tax is calculated based upon the difference between the property tax paid and the property tax that would have been paid if it had included the value of the nonqualifying improvements dated back to the date that the improvements were converted to a nonmultifamily use;

(b) The tax must include interest upon the amounts of the additional tax at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the improvements had been assessed at a value without regard to this chapter; and

(c) The additional tax owed together with interest and penalty must become a lien on the land and attach at the time the property or portion of the property is removed from multifamily use or the amenities no longer meet applicable requirements, and has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The 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. An additional tax unpaid on its due date is delinquent. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(2) Upon a determination that a tax exemption is to be canceled for a reason stated in this section, the governing authority shall notify the record owner of the property as shown by the tax rolls by mail, return receipt requested, of the determination to cancel the exemption. The owner may appeal the determination to the governing authority within thirty days by filing a notice of appeal with the clerk of the governing authority, which notice must specify the factual and legal basis on which the determination of cancellation is alleged to be erroneous. The governing authority or a hearing examiner or other official authorized by the governing authority may hear the appeal. At the hearing, all affected parties may be heard and all competent evidence received. After the hearing, the deciding body or officer shall either affirm, modify, or repeal the decision of cancellation of exemption based on the evidence received. An aggrieved party may appeal the decision of the deciding body or officer to the superior court under RCW 34.05.510 through 34.05.598.

(3) Upon determination by the governing authority or authorized representative to terminate an exemption, the county officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under RCW 84.40.080. The county assessor shall make such a valuation of the property and improvements as is necessary to permit the correction of the rolls. The owner may appeal the valuation to the county board of equalization under chapter 84.48 RCW and according to the provisions of RCW 84.40.038. If there has been a failure to comply with this chapter, the property must be listed as an omitted assessment for assessment years beginning January 1 of the calendar year in which the noncompliance first occurred, but the listing as an omitted assessment may not be for a period more than three calendar years preceding the year in which the failure to comply was discovered.

Sec. 2. RCW 84.26.130 and 1989 c 175 s 178 are each amended to read as follows:

Any decision by a local review board on an application for classification as historic property eligible for special valuation may be appealed to superior court under RCW 34.05.510 through 34.05.598 in addition to any other remedy at law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization in accordance with RCW 84.40.038.

Sec. 3. RCW 84.33.120 and 1999 sp.s. c 4 s 702 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	1	\$141
	2	136
	3	131
	4	95
2	1	118
	2	114
	3	110
	4	80
3	1	93
	2	90
	3	87
	4	66
4	1	70
	2	68
	3	66
	4	52
5	1	51
	2	48
	3	46
	4	31

	1	26
6	2	25
	3	25
	4	23
<hr/>		
	1	12
7	2	12
	3	11
	4	11
<hr/>		
8		1
<hr/>		

(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 in accordance with the provisions of RCW 84.40.038. 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 in accordance with the provisions of RCW 84.40.038.

(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;

(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;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(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. 4. RCW 84.33.130 and 1994 c 301 s 32 are each amended to read as follows:

(1) An owner of land desiring that it be designated as forest land and valued pursuant to RCW 84.33.120 as of January 1 of any year shall make application to the county assessor before such January 1.

(2) The application shall be made upon forms prepared by the department of revenue and supplied by the county assessor, and shall include the following:

(a) A legal description of or assessor's tax lot numbers for all land the applicant desires to be designated as forest land;

(b) The date or dates of acquisition of such land;

(c) A brief description of the timber on such land, or if the timber has been harvested, the owner's plan for restocking;

(d) Whether there is a forest management plan for such land;

(e) If so, the nature and extent of implementation of such plan;

(f) Whether such land is used for grazing;

(g) Whether such land has been subdivided or a plat filed with respect thereto;

(h) Whether such land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder;

(i) Whether such land is subject to forest fire protection assessments pursuant to RCW 76.04.610;

(j) Whether such land is subject to a lease, option or other right which permits it to be used for any purpose other than growing and harvesting timber;

(k) A summary of the past experience and activity of the applicant in growing and harvesting timber;

(l) A summary of current and continuing activity of the applicant in growing and harvesting timber;

(m) A statement that the applicant is aware of the potential tax liability involved when such land ceases to be designated as forest land;

(n) An affirmation that the statements contained in the application are true and that the land described in the application is, by itself or with other forest land not included in the application, in contiguous ownership of twenty or more acres which is primarily devoted to and used for growing and harvesting timber.

The assessor shall afford the applicant an opportunity to be heard if the application so requests.

(3) The assessor shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain either a "merchantable stand of timber" or an "adequate stocking" as defined by rule adopted by the forest practices board, except this reason (a) shall not alone be sufficient for denial of the application (i) if such land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or such longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within such land do not meet such minimum standards due to rock outcroppings, swamps, unproductive soil or other natural conditions;

(b) The applicant, with respect to such land, 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;

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling such ordinary high tide line and two hundred feet horizontally landward therefrom, except that if the higher and better use determined by the assessor to exist for such land would not be permitted or economically feasible by virtue of any federal, state or local law or regulation such land shall be assessed and valued pursuant to the procedures set forth in RCW 84.33.110 and 84.33.120 without being designated. The application shall be deemed to have been approved unless, prior to May 1, of the year after such application was mailed or delivered to the assessor, the assessor shall notify the applicant in writing of the extent to which the application is denied.

(4) An owner who receives notice pursuant to subsection (3) of this section that his or her application has been denied may appeal such denial to the county board of equalization in accordance with the provisions of RCW 84.40.038.

Sec. 5. RCW 84.33.140 and 1999 sp.s. c 4 s 703 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 in accordance with the provisions of RCW 84.40.038. 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 in accordance with the provisions of RCW 84.40.038.

(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;

(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;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(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. 6. RCW 84.34.035 and 1992 c 69 s 5 are each amended to read as follows:

The assessor shall act upon the application for current use classification of farm and agricultural lands under RCW 84.34.020(2), with due regard to all relevant evidence. The application shall be deemed to have been approved unless,

prior to the first day of May of the year after such application was mailed or delivered to the assessor, the assessor shall notify the applicant in writing of the extent to which the application is denied. An owner who receives notice that his or her application has been denied may appeal such denial to the board of equalization in the county where the property is located. The appeal shall be filed in accordance with RCW 84.40.038(~~(; within thirty days after the mailing of the notice of denial)~~). Within ten days following approval of the application, the assessor shall submit notification of such approval to the county auditor for recording in the place and manner provided for the public recording of state tax liens on real property. The assessor shall retain a copy of all applications.

The assessor shall, as to any such land, make a notation each year on the assessment list and the tax roll of the assessed value of such land for the use for which it is classified in addition to the assessed value of such land were it not so classified.

Sec. 7. RCW 84.34.108 and 1999 sp.s. c 4 s 706 and 1999 c 233 s 22 are each reenacted and 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 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 (4) 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 (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. 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) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) 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 in accordance with the provisions of RCW 84.40.038.

(4) 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 (6) 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.

(5) 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.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) 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 (4) of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(d);

(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;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

Sec. 8. RCW 84.36.385 and 1992 c 206 s 13 are each amended to read as follows:

(1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, shall be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue. However, an exemption from tax under RCW 84.36.381 shall continue for no more than four years unless a renewal application is filed as provided in subsection (3) of this section. The county assessor may also require, by written notice, a renewal application following an amendment of the income requirements set forth in RCW 84.36.381. Renewal applications shall be on forms prescribed and furnished by the department of revenue.

(2) A person granted an exemption under RCW 84.36.381 shall inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

(3) Each person exempt from taxes under RCW 84.36.381 in 1993 and thereafter, shall file with the county assessor a renewal application not later than December 31 of the year the assessor notifies such person of the requirement to file the renewal application.

(4) Beginning in 1992 and in each of the three succeeding years the county assessor shall notify approximately one-fourth of those persons exempt from taxes under RCW 84.36.381 in the current year who have not filed a renewal application within the previous four years, of the requirement to file a renewal application.

(5) If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption shall be denied but such denial shall be subject to appeal under the provisions of RCW 84.48.010(5) and in accordance with the provisions of RCW 84.40.038. If the applicant had received exemption in prior years based on erroneous information, the taxes shall be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed three years.

(6) The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information shall be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

Sec. 9. RCW 84.36.812 and 1984 c 220 s 9 are each amended to read as follows:

All additional taxes imposed under RCW 84.36.262 or 84.36.810 shall become due and payable by the seller or transferor at the time of sale. The county auditor shall not accept an instrument of conveyance unless the additional tax has

been paid or the department of revenue has determined that the property is not subject to RCW 84.36.262 or 84.36.810. The seller, the transferor, or the new owner may appeal the assessed values upon which the additional tax is based to the county board of equalization in accordance with the provisions of RCW 84.40.038.

Sec. 10. RCW 84.38.040 and 1994 c 301 s 34 are each amended to read as follows:

(1) Each claimant electing to defer payment of special assessments and/or real property tax obligations under this chapter shall file with the county assessor, on forms prescribed by the department and supplied by the assessor, a written declaration thereof. The declaration to defer special assessments and/or real property taxes for any year shall be filed no later than thirty days before the tax or assessment is due or thirty days after receiving notice under RCW 84.64.050, whichever is later: PROVIDED, That for good cause shown, the department may waive this requirement.

(2) The declaration shall designate the property to which the deferral applies, and shall include a statement setting forth (a) a list of all members of the claimant's household, (b) the claimant's equity value in his residence, (c) facts establishing the eligibility for the deferral under the provisions of this chapter, and (d) any other relevant information required by the rules of the department. Each copy shall be signed by the claimant subject to the penalties as provided in chapter 9A.72 RCW for false swearing. The first declaration to defer filed in a county shall include proof of the claimant's age acceptable to the assessor.

(3) The county assessor shall determine if each claimant shall be granted a deferral for each year but the claimant shall have the right to appeal this determination to the county board of equalization, in accordance with the provisions of RCW 84.40.038, whose decision shall be final as to the deferral of that year.

Sec. 11. RCW 84.40.038 and 1997 c 294 s 1 are each amended to read as follows:

(1) The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor or for any other reason specifically authorized by statute. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed shall not be considered by the board. The petition must be filed with the board on or before July 1st of the year of the assessment or determination, within thirty days after the date an assessment ((or), value change notice, or other notice has been mailed, or within a time limit of up to sixty days adopted by the county legislative authority, whichever is later. If a county legislative authority sets a time limit, the authority may not change the limit for three years from the adoption of the limit.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows

good cause for the late filing. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

- (a) Death or serious illness of the taxpayer or his or her immediate family;
- (b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;
- (c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;
- (d) Natural disaster such as flood or earthquake;
- (e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service; or
- (f) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization shall consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, shall be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board.

Sec. 12. RCW 84.48.080 and 1997 c 3 s 112 are each amended to read as follows:

(1) Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the ((~~assessed~~)) valuation of the property in each county bears to the ((~~correct~~)) total ((~~assessed~~)) valuation of all property in the state.

((~~First:~~)) (a) The department shall classify all property, real and personal, and shall raise and lower the ((~~assessed~~)) valuation of any class of property in any county to a value that shall be equal, so far as possible, to the ((~~correct-assessed~~)) true and fair value of such class as of January 1st of the current year((~~-after determining the correct appraised value, and any adjustment applicable under RCW 84.40.0305 for the property,~~)) for the purpose of ascertaining the just amount of tax due from each county for state purposes. ((~~In equalizing personal property as of~~

~~January 1st of the current year, the department shall use the assessment level of the preceding year.))~~ In equalizing personal property as of January 1st of the current year, the department shall use valuation data with respect to personal property from the three years immediately preceding the current assessment year in a manner it deems appropriate. Such classification may be on the basis of types of property, geographical areas, or both. For purposes of this section, for each county that has not provided the department with an assessment return by December 1st, the department shall proceed, using facts and information and in a manner it deems appropriate, to estimate the value of each class of property in the county.

~~((Second:))~~ (b) The department shall keep a full record of its proceedings and the same shall be published annually by the department.

(2) The department shall levy the state taxes authorized by law. The amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state ~~((as equalized under this section))~~, which assessed value shall be one hundred percent of the true and fair value of the property in money. The department shall apportion the amount of tax for state purposes levied by the department, among the several counties, in proportion to the ~~((assessed))~~ valuation of the taxable property of the county for the year as equalized by the department: PROVIDED, That for purposes of this apportionment, the department shall recompute the previous year's levy and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year. For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, any assessment return provided by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

In addition to computing a levy under this subsection that is reduced under RCW 84.55.012, the department shall compute a hypothetical levy without regard to the reduction under RCW 84.55.012. This hypothetical levy shall also be apportioned among the several counties in proportion to the valuation of the taxable property of the county for the year, as equalized by the department, in the same manner as the actual levy and shall be used by the county assessors for the purpose of recomputing and establishing a consolidated levy under RCW 84.52.010.

(3) The department shall have authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

(4) After the completion of the duties prescribed in this section, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment thereof among the counties, and the certification shall be available for public inspection.

Sec. 13. RCW 84.40.190 and 1993 c 33 s 4 are each amended to read as follows:

Every person required by this title to list property shall make out and deliver to the assessor, or to the department as required by RCW 84.40.065, either in person (~~or~~), by mail, or by electronic transmittal, a statement, verified under penalty of perjury, of all the personal property in his or her possession or under his or her control, and which, by the provisions of this title, he or she is required to list for taxation, either as owner or holder thereof. Each list, schedule or statement required by this chapter shall be signed by the individual if the person required to make the same is an individual; by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to so act if the person required to make the same is a corporation; by a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the same is a partnership or other unincorporated organization; or by the fiduciary, if the person required to make the same is a trust or estate. The list, schedule, or statement may be made and signed for the person required to make the same by an agent who is duly authorized to do so by a power of attorney filed with and approved by the assessor. When any list, schedule, or statement is made and signed by such agent, the principal required to make out and deliver the same shall be responsible for the contents and the filing thereof and shall be liable for the penalties imposed pursuant to RCW 84.40.130. No person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the department of revenue, or as otherwise required by law.

NEW SECTION. **Sec. 14.** A new section is added to chapter 84.52 RCW to read as follows:

(1) If an error has occurred in the levy of property taxes that has caused all taxpayers within a taxing district, other than the state, to pay an incorrect amount of property tax, the assessor shall correct the error by making an appropriate adjustment to the levy for that taxing district in the succeeding year. The adjustment shall be made without including any interest. If the governing authority of the taxing district determines that the amount of the adjustment in the succeeding year is so large as to cause a hardship for the taxing district or the taxpayers within the district, the adjustment may be made on a proportional basis over a period of not more than three consecutive years.

(a) A correction of an error in the levying of property taxes shall not be made for any period more than three years preceding the year in which the error is discovered.

(b) When calculating the levy limitation under chapter 84.55 RCW for levies made following the discovery of an error, the assessor shall determine and use the correct levy amount for the year or years being corrected as though the error had not occurred. The amount of the adjustment determined under this subsection (1) shall not be considered when calculating the levy limitation.

(c) If the taxing district in which a levy error has occurred does not levy property taxes in the year the error is discovered, or for a period of more than three years subsequent to the year the error was discovered, an adjustment shall not be made.

(2) If an error has occurred in the distribution of property taxes so that property tax collected has been incorrectly distributed to a taxing district or taxing districts wholly or partially within a county, the treasurer of the county in which the error occurred shall correct the error by making an appropriate adjustment to the amount distributed to that taxing district or districts in the succeeding year. The adjustment shall be made without including any interest. If the treasurer, in consultation with the governing authority of the taxing district or districts affected, determines that the amount of the adjustment in the succeeding year is so large as to cause a hardship for the taxing district or districts, the adjustment may be made on a proportional basis over a period of not more than three consecutive years. A correction of an error in the distribution of property taxes shall not be made for any period more than three years preceding the year in which the error is discovered.

Sec. 15. RCW 84.48.080 and 1997 c 3 s 112 are each amended to read as follows:

(1) Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the assessed valuation of the property in each county bears to the correct total assessed valuation of all property in the state.

~~((First:))~~ (a) The department shall classify all property, real and personal, and shall raise and lower the assessed valuation of any class of property in any county to a value that shall be equal, so far as possible, to the correct assessed value of such class as of January 1st of the current year, after determining the correct appraised value, and any adjustment applicable under RCW 84.40.0305 for the property, for the purpose of ascertaining the just amount of tax due from each county for state purposes. In equalizing personal property as of January 1st of the current year, the department shall use ~~((the assessment level of the preceding year))~~ valuation data with respect to personal property from the three years immediately

preceding the current assessment year in a manner it deems appropriate. Such classification may be on the basis of types of property, geographical areas, or both. For purposes of this section, for each county that has not provided the department with an assessment return by December 1st, the department shall proceed, using facts and information and in a manner it deems appropriate, to estimate the value of each class of property in the county.

~~((Second:))~~ (b) The department shall keep a full record of its proceedings and the same shall be published annually by the department.

(2) The department shall levy the state taxes authorized by law. The amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state as equalized under this section. The department shall apportion the amount of tax for state purposes levied by the department, among the several counties, in proportion to the assessed valuation of the taxable property of the county for the year as equalized by the department: PROVIDED, That for purposes of this apportionment, the department shall recompute the previous year's levy and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year. For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, any assessment return provided by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

In addition to computing a levy under this subsection that is reduced under RCW 84.55.012, the department shall compute a hypothetical levy without regard to the reduction under RCW 84.55.012. This hypothetical levy shall also be apportioned among the several counties in proportion to the valuation of the taxable property of the county for the year, as equalized by the department, in the same manner as the actual levy and shall be used by the county assessors for the purpose of recomputing and establishing a consolidated levy under RCW 84.52.010.

(3) The department shall have authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

(4) After the completion of the duties prescribed in this section, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment

thereof among the counties, and the certification shall be available for public inspection.

NEW SECTION. Sec. 16. Section 15 of this act takes effect for taxes levied in 2001 for collection in 2002 and thereafter if the proposed amendment to Article VII, section 1 of the state Constitution providing for valuation increases to be phased-in over a period of four years is validly submitted to and is approved and ratified by voters at the next general election. If the proposed amendment is not approved and ratified, section 15 of this act is null and void. If such proposed amendment is approved and ratified, section 12 of this act is null and void.

NEW SECTION. Sec. 17. Section 14 of this act takes effect January 1, 2002, and applies to errors that occur on and after January 1, 2002.

NEW SECTION. Sec. 18. Sections 1 through 12 of this act apply for taxes levied in 2001 for collection in 2002 and thereafter.

Passed the House April 13, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 186

[House Bill 1385]

TAXATION—LINEN AND UNIFORM SUPPLY SERVICES

AN ACT Relating to excise tax treatment of linen and uniform supply services; amending RCW 82.14.020; adding a new section to chapter 82.08 RCW; 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. The legislature finds that because of the mixed retailing nature of linen and uniform supply services, they have been incorrectly sited for tax purposes. As a result, some companies that perform some activities related to this activity outside the state of Washington have not been required to collect retail sales taxes upon linen and uniform supply services provided to Washington customers. The activity has aspects of both the rental of tangible personal property and retail services related to tangible personal property. This error in tax treatment provides an incentive for businesses to locate some of their functions out of state. In-state businesses cannot compete if their out-of-state competitors are not required to collect sales tax for services provided to the same customers.

The purpose of this act is to clarify the taxable situs and nature of linen and uniform supply services.

NEW SECTION. Sec. 2. A new section is added to chapter 82.08 RCW to read as follows:

For purposes of this chapter, a retail sale of linen and uniform supply services is deemed to occur at the place of delivery to the customer. "Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and similar items, whether ownership of the item is in the person operating the linen and uniform supply service or in the customer. The term includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses.

Sec. 3. RCW 82.14.020 and 1997 c 201 s 1 are each amended to read as follows:

For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of ~~((the second paragraph of))~~ RCW 82.04.050~~(2)~~, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in section 2 of this act.

~~(7)~~ "City" means a city or town;

~~((7))~~ (8) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

~~((8))~~ (9) "Taxable event" shall mean any retail sale, or any use of an article of tangible personal property, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended:

PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

~~((9))~~ (10) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city.

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, 2001.

Passed the House March 12, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 187

[Substitute House Bill 1467]

PROPERTY TAX ADMINISTRATION—TERMINOLOGY AND OBSOLETE PROVISIONS

AN ACT Relating to improving property tax administration by correcting terminology and deleting obsolete provisions; amending RCW 79.01.132, 84.04.030, 84.12.270, 84.12.280, 84.12.310, 84.12.330, 84.12.350, 84.12.360, 84.16.040, 84.16.050, 84.16.090, 84.16.110, 84.16.120, 84.36.477, 84.40.030, 84.40.040, 84.40.045, 84.40.405, 84.41.041, 84.48.010, 84.48.065, 84.48.075, 84.52.063, 84.70.010, and 84.70.010; reenacting and amending RCW 84.40.020; reenacting RCW 84.36.041; creating new sections; repealing RCW 84.04.018, 84.36.140, 84.36.150, 84.36.160, 84.36.161, 84.36.162, 84.36.176, 84.36.181, 84.36.190, 84.36.191, 84.36.270, 84.36.280, 84.36.290, 84.36.473, 84.36.490, 84.40.0305, 84.36.140, 84.36.150, 84.36.160, 84.36.161, 84.36.162, 84.36.176, 84.36.181, 84.36.190, 84.36.191, 84.36.270, 84.36.280, 84.36.290, 84.36.473, and 84.36.490; and providing a contingent effective date.

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

Sec. 1. RCW 79.01.132 and 1999 c 51 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 property 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 property 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.

Sec. 2. RCW 84.04.030 and 1997 c 3 s 102 are each amended to read as follows:

"Assessed value of property" shall be held and construed to mean the aggregate valuation of the property subject to taxation by any taxing district as ~~((determined under RCW 84.40.0305, reduced by the value of any applicable exemptions under RCW 84.36.381 or other law, and))~~ placed on the last completed and balanced tax rolls of the county preceding the date of any tax levy.

Sec. 3. RCW 84.12.270 and 1997 c 3 s 113 are each amended to read as follows:

The department of revenue shall annually make an assessment of the operating property of all companies; and between the fifteenth day of March and the first day of July of each ~~((of said))~~ year~~((s))~~ shall prepare an assessment roll upon which it shall enter ~~((the assessed))~~ and assess the true and fair value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. For the purpose of determining the ~~((assessed))~~ true and fair value of such property the department of revenue may inspect the property belonging to said companies and may take into consideration any information or knowledge obtained by it from such examination and inspection of such property, or of the books, records, and accounts of such companies, the statements filed as required by this chapter, the reports, statements, or returns of such companies filed in the office of any board, office, or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the ~~((assessed))~~ true and fair valuation of any and all property of such companies, whether operating or nonoperating property, and whether situated within or outside the state, and any other facts, evidence, or information that may be obtainable bearing upon the value of the operating property: PROVIDED, That in no event shall any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character, and ~~((assessed))~~ true and fair value of the operating property of such company.

Sec. 4. RCW 84.12.280 and 1998 c 335 s 2 are each amended to read as follows:

~~((+))~~ In making the assessment of the operating property of any railroad or logging railroad company and in the apportionment of the values and the taxation thereof, all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round houses, machine shops, or other buildings belonging to the company, used in the operation thereof, without separating the same into land and improvements, shall

be assessed as real property. And the rolling stock and other movable property belonging to any railroad or logging railroad company shall be considered as personal property and taxed as such: PROVIDED, That all of the operating property of street railway companies shall be assessed and taxed as personal property.

~~((2))~~ All of the operating property of airplane companies, telegraph companies, pipe line companies, and all of the operating property other than lands and buildings of electric light and power companies, telephone companies, and gas companies shall be assessed and taxed as personal property.

~~((3) Notwithstanding subsections (1) and (2) of this section, the limit provided under RCW 84.40.0305 shall be applied in the assessment of property under this section to the same extent as that limit is generally applied to property not assessed under this chapter.)~~

Sec. 5. RCW 84.12.310 and 1997 c 3 s 115 are each amended to read as follows:

For the purpose of determining the system value of the operating property of any such company, the department of revenue shall deduct from the ~~((assessed))~~ true and fair value of the total assets of such company, the ~~((assessed))~~ actual cash value of all nonoperating property owned by such company. For such purpose the department of revenue may require of the assessors of the various counties within this state a detailed list of such company's properties assessed by them, together with the assessable or assessed value thereof: PROVIDED, That such assessed or assessable value shall be advisory only and not conclusive on the department of revenue as to the value thereof.

Sec. 6. RCW 84.12.330 and 1998 c 335 s 3 are each amended to read as follows:

Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company, which shall be considered sufficient if described in the language of RCW 84.12.200(12), as applied to the company, following which shall be entered the ~~((assessed))~~ true and fair value of the operating property as determined by the department of revenue. No assessment shall be invalidated by reason of a mistake in the name of the company assessed, or the omission of the name of the owner or by the entry as owner of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the ~~((assessed))~~ true and fair value of the operating property of the company, as herein required, it shall notify the company by mail of the valuation determined by it and entered upon the roll.

Sec. 7. RCW 84.12.350 and 1997 c 3 s 117 are each amended to read as follows:

Upon determination by the department of revenue of the ~~((assessed))~~ true and fair value of the property appearing on such rolls it shall apportion such value to

the respective counties entitled thereto, as hereinafter provided, and shall determine the equalized assessed valuation of such property in each such county and in the several taxing districts therein, by applying to such actual apportioned value the same ratio as the ratio of assessed to ~~((the correct assessed))~~ actual value of the general property in such county: PROVIDED, That, whenever the amount of the true and ~~((correct assessed))~~ fair value of the operating property of any company otherwise apportionable to any county or other taxing district shall be less than two hundred fifty dollars, such amount need not be apportioned to such county or taxing district but may be added to the amount apportioned to an adjacent county or taxing district.

Sec. 8. RCW 84.12.360 and 1998 c 335 s 4 are each amended to read as follows:

The true and fair value of the operating property assessed to a company, as fixed and determined by the department of revenue, shall be apportioned by the department of revenue to the respective counties and to the taxing districts thereof wherein such property is located in the following manner:

(1) Property of all railroad companies other than street railroad companies, telegraph companies and pipe line companies—upon the basis of that proportion of the value of the total operating property within the state which the mileage of track, as classified by the department of revenue (in case of railroads), mileage of wire (in the case of telegraph companies), and mileage of pipe line (in the case of pipe line companies) within each county or taxing district bears to the total mileage thereof within the state, at the end of the calendar year last past. For the purpose of such apportionment the department may classify railroad track.

(2) Property of street railroad companies, telephone companies, electric light and power companies, and gas companies—upon the basis of relative value of the operating property within each county and taxing district to the value of the total operating property within the state to be determined by such factors as the department of revenue shall deem proper.

(3) Planes or other aircraft of airplane companies—upon the basis of such factor or factors of allocation, to be determined by the department of revenue, as will secure a substantially fair and equitable division between counties and other taxing districts.

All other property of airplane companies—upon the basis set forth in subsection (2) of this section.

The basis of apportionment with reference to all public utility companies above prescribed shall not be deemed exclusive and the department of revenue in apportioning values of such companies may also take into consideration such other information, facts, circumstances, or allocation factors as will enable it to make a substantially just and correct valuation of the operating property of such companies within the state and within each county thereof.

Sec. 9. RCW 84.16.040 and 1997 c 3 s 119 are each amended to read as follows:

The department of revenue shall annually make an assessment of the operating property of each private car company; and between the first day of May and the first day of July of each ~~((of said))~~ year~~((s))~~ shall prepare an assessment roll upon which it shall enter and assess the ~~((assessed))~~ true and fair value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. For the purpose of determining the ~~((assessed))~~ true and fair value of such property the department of revenue may take into consideration any information or knowledge obtained by it from an examination and inspection of such property, or of the books, records, and accounts of such companies, the statements filed as required by this chapter, the reports, statements, or returns of such companies filed in the office of any board, office, or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the ~~((assessed))~~ true and fair valuation of any and all property of such companies, whether operating property or nonoperating property, and whether situated within or without the state, and any other facts, evidences, or information that may be obtainable bearing upon the value of the operating property: PROVIDED, That in no event shall any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character, and ~~((assessed))~~ true and fair value of the operating property of such company.

Sec. 10. RCW 84.16.050 and 1997 c 3 s 120 are each amended to read as follows:

The department of revenue may, in determining the ~~((assessed))~~ true and fair value of the operating property to be placed on the assessment roll value the entire property as a unit. If the company owns, leases, operates or uses property partly within and partly without the state, the department of revenue may determine the value of the operating property within this state by the proportion that the value of such property bears to the value of the entire operating property of the company, both within and without this state. In determining the operating property which is located within this state the department of revenue may consider and base such determination on the proportion which the number of car miles of the various classes of cars made in this state bears to the total number of car miles made by the same cars within and without this state, or to the total number of car miles made by all cars of the various classes within and without this state. If the value of the operating property of the company cannot be fairly determined in such manner the department of revenue may use any other reasonable and fair method to determine the value of the operating property of the company within this state.

Sec. 11. RCW 84.16.090 and 1997 c 3 s 121 are each amended to read as follows:

Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company, which shall be considered sufficient if described in the language of RCW 84.16.010(3) or

otherwise, following which shall be entered the ~~((assessed))~~ true and fair value of the operating property as determined by the department of revenue. No assessment shall be invalid by a mistake in the name of the company assessed, by omission of the name of the owner or by the entry of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the ~~((assessed))~~ true and fair value of the operating property of the company, as required, it shall notify the company by mail of the valuation determined by it and entered upon the roll; and thereupon such ~~((assessed))~~ valuation shall become the ~~((assessed))~~ true and fair value of the operating property of the company, subject to revision or correction by the department of revenue as hereinafter provided; and shall be the valuation upon which, after equalization by the department of revenue as hereinafter provided, the taxes of such company shall be based and computed.

Sec. 12. RCW 84.16.110 and 1997 c 3 s 122 are each amended to read as follows:

Upon determination by the department of revenue of the true and ~~((correct assessed))~~ fair value of the property appearing on such rolls the department shall apportion such value to the respective counties entitled thereto as hereinafter provided, and shall determine the equalized or assessed valuation of such property in such counties by applying to such actual apportioned value the same ratio as the ratio of assessed to ~~((the correct assessed))~~ actual value of the general property of the respective counties: PROVIDED, That, whenever the amount of the true and ~~((correct assessed))~~ fair value of the operating property of any company otherwise apportionable to any county shall be less than two hundred fifty dollars, such amount need not be apportioned to such county but may be added to the amount apportioned to an adjacent county.

Sec. 13. RCW 84.16.120 and 1997 c 3 s 123 are each amended to read as follows:

The ~~((assessed))~~ true and fair value of the property of each company as fixed and determined by the department of revenue as herein provided shall be apportioned to the respective counties in the following manner:

(1) If all the operating property of the company is situated entirely within a county and none of such property is located within, extends into, or through or is operated into or through any other county, the entire value thereof shall be apportioned to the county within which such property is situated, located, and operated.

(2) If the operating property of any company is situated or located within, extends into or is operated into or through more than one county, the value thereof shall be apportioned to the respective counties into or through which its cars are operated in the proportion that the length of main line track of the respective railroads moving such cars in such counties bears to the total length of main line track of such respective railroads in this state.

(3) If the property of any company is of such character that it will not be reasonable, feasible or fair to apportion the value as hereinabove provided, the value thereof shall be apportioned between the respective counties into or through which such property extends or is operated or in which the same is located in such manner as may be reasonable, feasible and fair.

Sec. 14. RCW 84.36.041 and 1999 c 358 s 16 and 1999 c 356 s 1 are each reenacted to read as follows:

(1) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents; or

(b) The home is subsidized under a federal department of housing and urban development program. The department of revenue shall provide by rule a definition of homes eligible for exemption under this subsection (1)(b), consistent with the purposes of this section.

(2) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and the construction, rehabilitation, acquisition, or refinancing of the home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses the tax exempt bonds and the financing program requires the home to reserve a percentage of all dwelling units so financed for low-income residents. The initial term of the exemption under this subsection shall equal the term of the tax exempt bond used in connection with the financing program, or the term of the requirement to reserve dwelling units for low-income residents, whichever is shorter. If the financing program involves less than the entire home, only those dwelling units included in the financing program are eligible for total exemption. The department of revenue shall provide by rule the requirements for monitoring compliance with the provisions of this subsection and the requirements for exemption including:

(a) The number or percentage of dwelling units required to be occupied by low-income residents, and a definition of low income;

(b) The type and character of the dwelling units, whether independent units or otherwise; and

(c) Any particular requirements for continuing care retirement communities.

(3) A home for the aging is eligible for a partial exemption on the real property and a total exemption for the home's personal property if the home does not meet the requirements of subsection (1) of this section because fewer than fifty percent of the occupied dwelling units are occupied by eligible residents, as follows:

(a) A partial exemption shall be allowed for each dwelling unit in a home occupied by a resident requiring assistance with activities of daily living.

(b) A partial exemption shall be allowed for each dwelling unit in a home occupied by an eligible resident.

(c) A partial exemption shall be allowed for an area jointly used by a home for the aging and by a nonprofit organization, association, or corporation currently exempt from property taxation under one of the other provisions of this chapter. The shared area must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property taxation under one of the other provisions of this chapter, such as kitchen, dining, and laundry areas.

(d) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, less the assessed value of any area exempt under (c) of this subsection, by a fraction. The numerator of the fraction is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living. The denominator of the fraction is the total number of occupied dwelling units as of December 31st of the first assessment year the home becomes operational for which exemption is claimed and January 1st of each subsequent assessment year for which exemption is claimed.

(4) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(5) A home for the aging is exempt from taxation only if the organization operating the home is exempt from income tax under section 501(c) of the federal internal revenue code as existing on January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purposes of this section.

(6) In order for the home to be eligible for exemption under subsections (1)(a) and (3)(b) of this section, each eligible resident of a home for the aging shall submit an income verification form to the county assessor by July 1st of the assessment year for which exemption is claimed. However, during the first year a home becomes operational, the county assessor shall accept income verification forms from eligible residents up to December 31st of the assessment year. The income verification form shall be prescribed and furnished by the department of revenue. An eligible resident who has filed a form for a previous year need not file a new form until there is a change in status affecting the person's eligibility.

(7) In determining the true and fair value of a home for the aging for purposes of the partial exemption provided by subsection (3) of this section, the assessor shall apply the computation method provided by RCW 84.34.060 and shall consider only the use to which such property is applied during the years for which such partial exemptions are available and shall not consider potential uses of such property.

(8) As used in this section:

(a) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as a principal place of residence as of December 31st of the first assessment year the home becomes operational. In each

subsequent year, the eligible resident must occupy the dwelling unit as a principal place of residence as of January 1st of the assessment year for which the exemption is claimed. Confinement of the person to a hospital or nursing home does not disqualify the claim of exemption if the dwelling unit is temporarily unoccupied or if the dwelling unit is occupied by a spouse, a person financially dependent on the claimant for support, or both; and

(ii) Is sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. Any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income of no more than the greater of twenty-two thousand dollars or eighty 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 person resides. For the purposes of determining eligibility under this section, a "cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home. If the person submitting the income verification form was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person submitting the income verification form is reduced for two or more months of the preceding year by reason of the death of the person's spouse, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after the death of the spouse by twelve.

(c) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

- (iii) Amounts deducted for depreciation;
- (iv) Pension and annuity receipts;
- (v) Military pay and benefits other than attendant-care and medical-aid payments;
- (vi) Veterans benefits other than attendant-care and medical-aid payments;
- (vii) Federal social security act and railroad retirement benefits;
- (viii) Dividend receipts; and
- (ix) Interest received on state and municipal bonds.

(d) "Resident requiring assistance with activities of daily living" means a person who requires significant assistance with the activities of daily living and who would be at risk of nursing home placement without this assistance.

(e) "Home for the aging" means a residential housing facility that (i) provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person; (ii) has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and (iii) provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(9) A for-profit home for the aging that converts to nonprofit status after June 11, 1992, and would otherwise be eligible for tax exemption under this section may not receive the tax exemption until five years have elapsed since the conversion. The exemption shall then be ratably granted over the next five years.

Sec. 15. RCW 84.36.477 and 1983 1st ex.s. c 62 s 6 are each amended to read as follows:

(1) Business inventories ((as defined in RCW 84.36.473)) are exempt from property taxation.

(2) As used in this section:

(a)(i) "Business inventories" means all livestock, inventories of finished goods and work in process, and personal property not under lease or rental, acquired, or produced solely for the purpose of sale or lease or for the purpose of consuming the property in producing for sale or lease a new article of tangible personal property of which the property becomes an ingredient or component.

(ii) "Business inventories" also includes:

(A) All grains and flour, fruit and fruit products, unprocessed timber, vegetables and vegetable products, and fish and fish products, while being transported to or held in storage in a public or private warehouse or storage area if actually shipped to points outside the state on or before April 30th of the first year for which they would otherwise be taxable;

(B) All finished plywood, hardboard, and particleboard panels shipped from outside this state to any processing plant within this state, if the panels are moving under a through freight rate to final destination outside this state and the carrier grants the shipper the privilege of stopping the shipment in transit for the purpose of storing, milling, manufacturing, or other processing, while the panels are in the

process of being treated or shaped into flat component parts to be incorporated into finished products outside this state and for thirty days after completion of the processing or treatment;

(C) All ore or metal shipped from outside this state to any smelter or refining works within this state, while in process of reduction or refinement and for thirty days after completion of the reduction or refinement; and

(D) All metals refined by electrolytic process into cathode or bar form while in this form and held under negotiable warehouse receipt in a public or private warehouse recognized by an established incorporated commodity exchange and for sale through the exchange.

(iii) "Business inventories" does not include personal property acquired or produced for the purpose of lease or rental if the property was leased or rented at any time during the calendar year immediately preceding the year of assessment and was not thereafter remanufactured, nor does it include property held within the normal course of business for lease or rental for periods of less than thirty days.

(iv) "Business inventories" does not include agricultural or horticultural property fully or partially exempt under RCW 84.36.470.

(v) "Business inventories" does not include timber that is standing on public land and that is sold under a contract entered into after August 1, 1982;

(b) "Fish and fish products" means all fish and fish products suitable and designed for human consumption, excluding all others;

(c) "Fruit and fruit products" means all raw edible fruits, berries, and hops and all processed products of fruits, berries, or hops, suitable and designed for human consumption, while in the hands of the first processor;

(d) "Processed" means canning, barreling, bottling, preserving, refining, freezing, packing, milling, or any other method employed to keep any grain, fruit, vegetable, or fish in an edible condition or to put it into more suitable or convenient form for consuming, storing, shipping, or marketing;

(e) "Remanufactured" means the restoration of property to essentially its original condition, but does not mean normal maintenance or repairs; and

(f) "Vegetables and vegetable products" means all raw edible vegetables such as peas, beans, beets, sugar beets, and other vegetables, and all processed products of vegetables, suitable and designed for human consumption, while in the hands of the first processor.

Sec. 16. RCW 84.40.020 and 1997 c 239 s 2 and 1997 c 3 s 103 are each reenacted and amended to read as follows:

All real property in this state subject to taxation shall be listed and assessed every year, with reference to its (~~appraised and assessed~~) value(~~s~~) on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.17.260 and 42.17.310. All personal property in this state subject to taxation shall be listed and

assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business.

Sec. 17. RCW 84.40.030 and 1998 c 320 s 9 are each amended to read as follows:

All ((personal)) property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

~~((All real property shall be appraised at one hundred percent of its true and fair value in money and assessed as provided in RCW 84.40.030 unless specifically provided otherwise by law.))~~

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant

number of sales of similar property in the general area, the provisions of this subsection shall be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined; also the true and fair value of structures thereon, but the ~~((appraised))~~ valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

Sec. 18. RCW 84.40.040 and 1997 c 3 s 106 are each amended to read as follows:

The assessor shall begin the preliminary work for each assessment not later than the first day of December of each year in all counties in the state. The assessor shall also complete the duties of listing and placing valuations on all property by May 31st of each year, except that the listing and valuation of construction and mobile homes under RCW 36.21.080 and 36.21.090 shall be completed by August 31st of each year, and in the following manner, to wit:

The assessor shall actually determine as nearly as practicable the true and fair value of each tract or lot of land listed for taxation and of each improvement located thereon and shall enter ~~((as the appraised value))~~ one hundred percent of the true and fair value of such land and ~~((of the total true and fair))~~ value of such improvements, together with the total of such one hundred percent valuations, opposite each description of property on the assessment list and tax roll.

~~((The assessor shall determine the assessed value, under RCW 84.40.0305, for each tract or lot of land listed for taxation, including improvements located thereon; and shall also enter this value opposite each description of property on the assessment list and tax roll.))~~

The assessor shall make an alphabetical list of the names of all persons in the county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the standard form prescribed by the department of revenue, which statement and list shall include, if required by the form, the year of acquisition and total original cost of personal property in each category of the prescribed form, and shall be signed and verified under penalty of perjury by the person listing the property: PROVIDED, That the assessor may list and value improvements on publicly owned land in the same manner as real property is listed and valued, including conformance with the revaluation program required under chapter 84.41 RCW. Such list and statement shall be filed on or before the last day of April. The assessor shall on or before the 1st day of January of each year mail a notice to all such persons at their last known address that such statement and list is required, such notice to be accompanied by the form on which the statement or list is to be made: PROVIDED, That the notice mailed by the assessor to each taxpayer each year shall, if practicable, include the statement and list of personal property of the taxpayer for the preceding year.

Upon receipt of such statement and list the assessor shall thereupon determine the true and fair value of the property included in such statement and enter one hundred percent of the same on the assessment roll opposite the name of the party assessed; and in making such entry in the assessment list, the assessor shall give the name and post office address of the party listing the property, and if the party resides in a city the assessor shall give the street and number or other brief description of the party's residence or place of business. The assessor may, after giving written notice of the action to the person to be assessed, add to the assessment list any taxable property which should be included in such list.

Sec. 19. RCW 84.40.045 and 1997 c 3 s 107 are each amended to read as follows:

The assessor shall give notice of any change in the ~~((assessed))~~ true and fair value of real property for the tract or lot of land and any improvements thereon no later than thirty days after appraisal: PROVIDED, That no such notice shall be mailed during the period from January 15 to February 15 of each year: PROVIDED FURTHER, That no notice need be sent with respect to changes in valuation of forest land made pursuant to chapter 84.33 RCW.

The notice shall contain a statement of both the prior and the new ~~((appraised and assessed values))~~ true and fair value, stating separately land and improvement ~~((appraised))~~ values, and a brief statement of the procedure for appeal to the board of equalization and the time, date, and place of the meetings of the board.

The notice shall be mailed by the assessor to the taxpayer.

If any taxpayer, as shown by the tax rolls, holds solely a security interest in the real property which is the subject of the notice, pursuant to a mortgage, contract of sale, or deed of trust, such taxpayer shall, upon written request of the assessor, supply, within thirty days of receipt of such request, to the assessor the name and address of the person making payments pursuant to the mortgage, contract of sale, or deed of trust, and thereafter such person shall also receive a copy of the notice provided for in this section. Willful failure to comply with such request within the time limitation provided for herein shall make such taxpayer subject to a maximum civil penalty of five thousand dollars. The penalties provided for herein shall be recoverable in an action by the county prosecutor, and when recovered shall be deposited in the county current expense fund. The assessor shall make the request provided for by this section during the month of January.

Sec. 20. RCW 84.40.405 and 2000 c 103 s 28 are each amended to read as follows:

The department of revenue shall promulgate such rules and regulations, and prescribe such procedures as it deems necessary to carry out RCW 84.36.470(~~;~~ ~~84.36.473;~~) and 84.36.477(~~;~~ ~~and this section~~)).

Sec. 21. RCW 84.41.041 and 1997 c 3 s 108 are each amended to read as follows:

Each county assessor shall cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan shall provide that a reasonable portion of all taxable real property within a county shall be revalued and these newly-determined values placed on the assessment rolls each year. The department may approve a plan that provides that all property in the county be revalued every two years. If the revaluation plan provides for physical inspection at least once each four years, during the intervals between each physical inspection of real property, the ~~((appraised))~~ valuation of such property may be adjusted to its current true and fair value, such adjustments to be based upon appropriate statistical data. If the revaluation plan provides for physical inspection less frequently than once each four years, during the intervals between each physical inspection of real property, the ~~((appraised))~~ valuation of such property shall be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data. ~~((If the appraised valuation is changed, the assessed value shall be recalculated under RCW 84.40.0305.))~~

The assessor may require property owners to submit pertinent data respecting taxable property in their control including data respecting any sale or purchase of said property within the past five years, the cost and characteristics of any improvement on the property and other facts necessary for appraisal of the property.

Sec. 22. RCW 84.48.010 and 1997 c 3 s 109 are each amended to read as follows:

Prior to July 15th, the county legislative authority shall form a board for the equalization of the assessment of the property of the county. The members of said board shall receive a per diem amount as set by the county legislative authority for each day of actual attendance of the meeting of the board of equalization to be paid out of the current expense fund of the county: PROVIDED, That when the county legislative authority constitute the board they shall only receive their compensation as members of the county legislative authority. The board of equalization shall meet in open session for this purpose annually on the 15th day of July and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that ~~((the appraised value of))~~ each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, ~~((and so that the assessed value of each tract or lot of real property is entered on the assessment list at its correct amount))~~ which is presumed to be correct under RCW 84.40.0301, and subject to the following rules:

First. They shall raise the ~~((appraised))~~ valuation of each tract or lot or item of real property which is returned below its true and fair value to such price or sum

as to be the true and fair value thereof, ~~((and raise the assessed valuation of each tract or lot or item of real property which is returned below its correct amount to the correct amount))~~ after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the ~~((appraised))~~ valuation of each tract or lot or item which is returned above its true and fair value to such price or sum as to be the true and fair value thereof ~~((and reduce the assessed valuation of each tract or lot or item of real property which is returned above its correct amount to the correct amount))~~.

Third. They shall raise the valuation of each class of personal property which is returned below its true and fair value to such price or sum as to be the true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual whenever the aggregate value is less than the true valuation of the taxable personal property possessed by such individual, to such sum or amount as to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall reduce the valuation of each class of personal property enumerated on the detail and assessment list of the current year, which is returned above its true and fair value, to such price or sum as to be the true and fair value thereof; and they shall reduce the aggregate valuation of the personal property of such individual who has been assessed at too large a sum to such sum or amount as was the true and fair value of the personal property.

Fifth. The board may review all claims for either real or personal property tax exemption as determined by the county assessor, and shall consider any taxpayer appeals from the decision of the assessor thereon to determine (1) if the taxpayer is entitled to an exemption, and (2) if so, the amount thereof.

The clerk of the board shall keep an accurate journal or record of the proceedings and orders of said board showing the facts and evidence upon which their action is based, and the said record shall be published the same as other proceedings of county legislative authority, and shall make a true record of the changes of the descriptions and ~~((appraised))~~ assessed values ordered by the county board of equalization. The assessor shall ~~((recalculate assessed values and))~~ correct the real and personal assessment rolls in accordance with the changes made by the said county board of equalization, and the assessor shall make duplicate abstracts of such corrected values, one copy of which shall be retained in the office, and one copy forwarded to the department of revenue on or before the eighteenth day of August next following the meeting of the county board of equalization.

The county board of equalization shall meet on the 15th day of July and may continue in session and adjourn from time to time during a period not to exceed four weeks, but shall remain in session not less than three days: PROVIDED, That the county board of equalization with the approval of the county legislative authority may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater.

No taxes, except special taxes, shall be extended upon the tax rolls until the property valuations are equalized by the department of revenue for the purpose of raising the state revenue.

County legislative authorities as such shall at no time have any authority to change the valuation of the property of any person or to release or commute in whole or in part the taxes due on the property of any person.

Sec. 23. RCW 84.48.065 and 1997 c 3 s 110 are each amended to read as follows:

(1) The county assessor or treasurer may cancel or correct assessments on the assessment or tax rolls which are erroneous due to manifest errors in description, double assessments, clerical errors in extending the rolls, (~~clerical errors in calculating the assessed value under RCW 84.40.0305;~~) and such manifest errors in the listing of the property which do not involve a revaluation of property, except in the case that a taxpayer produces proof that an authorized land use authority has made a definitive change in the property's land use designation. In such a case, correction of the assessment or tax rolls may be made notwithstanding the fact that the action involves a revaluation of property. Manifest errors that do not involve a revaluation of property include the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family. When the county assessor cancels or corrects an assessment, the assessor shall send a notice to the taxpayer in accordance with RCW 84.40.045, advising the taxpayer that the action has been taken and notifying the taxpayer of the right to appeal the cancellation or correction to the county board of equalization, in accordance with RCW 84.40.038. When the county assessor or treasurer cancels or corrects an assessment, a record of such action shall be prepared, setting forth therein the facts relating to the error. The record shall also set forth by legal description all property belonging exclusively to the state, any county, or any municipal corporation whose property is exempt from taxation, upon which there remains, according to the tax roll, any unpaid taxes. No manifest error cancellation or correction, including a cancellation or correction made due to a definitive change of land use designation, shall be made for any period more than three years preceding the year in which the error is discovered.

(2)(a) In the case of a definitive change of land use designation, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The assessment roll has previously been certified in accordance with RCW 84.40.320.

(b) In all other cases, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The following conditions are met:

(A) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(B) The taxpayer has timely filed a petition with the county board of equalization pursuant to RCW 84.40.038 for the current assessment year;

(C) The county board of equalization has not yet held a hearing on the merits of the taxpayer's petition.

(3) The assessor shall issue a supplementary roll or rolls including such cancellations and corrections, and the assessment and levy shall have the same force and effect as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the rolls as modified.

Sec. 24. RCW 84.48.075 and 1997 c 3 s 111 are each amended to read as follows:

(1) The department of revenue shall annually, prior to the first Monday in September, determine and submit to each assessor a preliminary indicated ratio for each county: **PROVIDED**, That the department shall establish rules and regulations pertinent to the determination of the indicated ratio, the indicated real property ratio and the indicated personal property ratio: **PROVIDED FURTHER**, That these rules and regulations may provide that data, as is necessary for said determination, which is available from the county assessor of any county and which has been audited as to its validity by the department, shall be utilized by the department in determining the indicated ratio.

(2) To such extent as is reasonable, the department may define use classes of property for the purposes of determination of the indicated ratio. Such use classes may be defined with respect to property use and may include agricultural, open space, timber and forest lands.

(3) The department shall review each county's preliminary ratio with the assessor, a landowner, or an owner of an intercounty public utility or private car company of that county, if requested by the assessor, a landowner, or an owner of an intercounty public utility or private car company of that county, respectively, between the first and third Mondays of September. Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of September, the department shall certify to each county assessor the real and personal property ratio for that county.

(4) The department of revenue shall also examine procedures used by the assessor to assess real and personal property in the county, including calculations, use of prescribed value schedules, and efforts to locate all taxable property in the county. If any examination by the department discloses other than market value is being listed (~~(as appraised value)~~) on the county assessment rolls of the county by the assessor and, after due notification by the department, is not corrected, the

department of revenue shall, in accordance with rules adopted by the department, adjust the ratio of that type of property, which adjustment shall be used for determining the county's indicated ratio.

Sec. 25. RCW 84.52.063 and 1997 c 3 s 125 are each amended to read as follows:

A rural library district may impose a regular property tax levy in an amount equal to that which would be produced by a levy of fifty cents per thousand dollars of assessed value multiplied by an ~~((equalized))~~ assessed valuation equal to one hundred percent of the true and fair value of the taxable property in the rural library district, as determined by the department of revenue's indicated county ratio: **PROVIDED**, That when any county assessor shall find that the aggregate rate of levy on any property will exceed the limitation set forth in RCW 84.52.043 and 84.52.050, as now or hereafter amended, before recomputing and establishing a consolidated levy in the manner set forth in RCW 84.52.010, the assessor shall first reduce the levy of any rural library district, by such amount as may be necessary, but the levy of any rural library district shall not be reduced to less than fifty cents per thousand dollars against the value of the taxable property, as determined by the county, prior to any further adjustments pursuant to RCW 84.52.010. For purposes of this section "regular property tax levy" shall mean a levy subject to the limitations provided for in Article VII, section 2 of the state Constitution and/or by statute.

Sec. 26. RCW 84.70.010 and 1999 sp.s. c 8 s 1 are each amended to read as follows:

(1) If, on or before December 31 in any calendar year, any real or personal property placed upon the assessment roll of that year is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster, the ~~((assessed))~~ true and fair value of such property shall be reduced for that assessment year by an amount determined by taking the ~~((assessed))~~ true and fair value of such taxable property before destruction or reduction in value and deduct therefrom the true and fair value of the remaining property after destruction or reduction in value.

(2) Taxes levied for collection in the year in which the ~~((assessed))~~ true and fair value has been reduced under subsection (1) of this section shall be abated in whole or in part as provided in this subsection. The amount of taxes to be abated shall be determined by first multiplying the amount deducted from ~~((assessed))~~ the true and fair value under subsection (1) of this section by the rate of levy applicable to the property in the tax year. Then divide the product by the number of days in the year and multiply the quotient by the number of days remaining in the calendar year after the date of the destruction or reduction in value of the property. If taxes abated under this section have been paid, the amount paid shall be refunded under RCW 84.69.020. For taxes levied for collection in 1998 and 1999, this subsection (2) applies to property that is destroyed in whole or in part, or is in an area that has

been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster. For taxes levied for collection in 2000 through 2004, this subsection (2) applies to property that is destroyed in whole or in part, or is in an area that has been declared a federal disaster area and has been reduced in value by more than twenty percent as a result of a natural disaster. This subsection (2) does not apply to taxes levied for collection in 2005 and thereafter.

(3) No reduction in the ~~((assessed))~~ true and fair value or abatements shall be made more than three years after the date of destruction or reduction in value.

(4) The assessor shall make such reduction on his or her own motion; however, the taxpayer may make application for reduction on forms prepared by the department and provided by the assessor. The assessor shall notify the taxpayer of the amount of reduction.

(5) If destroyed property is replaced prior to the valuation dates contained in RCW 36.21.080 and 36.21.090, the total taxable value for that assessment year shall not exceed the value as of the appropriate valuation date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

(6) The taxpayer may appeal the amount of reduction to the county board of equalization ~~((within thirty days of notification or July 1st of the year of reduction; whichever is later))~~ in accordance with the provisions of RCW 84.40.038. The board shall reconvene, if necessary, to hear the appeal.

NEW SECTION. Sec. 27. The following acts or parts of acts are each repealed:

- (1) RCW 84.04.018 ("Appraised value of property") and 1997 c 3 s 101;
- (2) RCW 84.36.140 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Limitation—Proof of shipment) and 1972 ex.s. c 30 s 2 & 1961 c 15 s 84.36.140;
- (3) RCW 84.36.150 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Listing and subsequent cancellation—Proof) and 1967 ex.s. c 149 s 32 & 1961 c 15 s 84.36.150;
- (4) RCW 84.36.160 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Definitions) and 1972 ex.s. c 30 s 1, 1971 ex.s. c 137 s 1, & 1961 c 15 s 84.36.160;
- (5) RCW 84.36.161 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Construction of RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.162—Effect on other acts) and 1998 c 311 s 21 & 1961 c 15 s 84.36.161;
- (6) RCW 84.36.162 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Purpose) and 1961 c 15 s 84.36.162;
- (7) RCW 84.36.176 (Plywood, hardboard and particle board panels in transit) and 1967 ex.s. c 149 s 34;
- (8) RCW 84.36.181 (Ores, metals from out-of-state in process of reduction or refinement) and 1961 c 168 s 2;

(9) RCW 84.36.190 (Metals in cathode or bar form for sale and held under negotiable warehouse receipt) and 1961 c 15 s 84.36.190;

(10) RCW 84.36.191 (Metals in cathode or bar form for sale and held under negotiable warehouse receipt—Purpose and construction) and 1961 c 15 s 84.36.191;

(11) RCW 84.36.270 (Real property beneath air space dedicated to public body for stadium facilities) and 1973 1st ex.s. c 195 s 95 & 1967 ex.s. c 117 s 1;

(12) RCW 84.36.280 (Real property beneath air space dedicated to public body for stadium facilities—Exemption effective only on completion of construction of facility) and 1967 ex.s. c 117 s 2;

(13) RCW 84.36.290 (Real property beneath air space dedicated to public body for stadium facilities—Taxes for school purposes not affected) and 1967 ex.s. c 117 s 3;

(14) RCW 84.36.473 ("Business inventories" and "successor" defined) and 1998 c 311 s 23, 1983 1st ex.s. c 62 s 2, 1982 c 174 s 1, 1975 1st ex.s. c 291 s 8, & 1974 ex.s. c 169 s 4;

(15) RCW 84.36.490 (Land, buildings, machinery, etc., used to manufacture alcohol fuel—Exceptions—Limitations—Claims—Administrative rules) and 1985 c 371 s 7 & 1980 c 157 s 1; and

(16) RCW 84.40.0305 (Assessed value—Determination—Limited value) and 1997 c 3 s 105.

NEW SECTION. Sec. 28. The repeals in section 27 of this act do not affect any existing right acquired or liability or obligation incurred under the sections repealed or under any rule or order adopted under those sections, nor do they affect any proceeding instituted under those sections.

Sec. 29. RCW 84.70.010 and 1999 sp.s. c 8 s 1 are each amended to read as follows:

(1) If, on or before December 31 in any calendar year, any real or personal property placed upon the assessment roll of that year is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster, the assessed value of such property shall be reduced for that assessment year by an amount determined by taking the assessed value of such taxable property before destruction or reduction in value and deduct therefrom the true and fair value of the remaining property after destruction or reduction in value.

(2) Taxes levied for collection in the year in which the assessed value has been reduced under subsection (1) of this section shall be abated in whole or in part as provided in this subsection. The amount of taxes to be abated shall be determined by first multiplying the amount deducted from assessed value under subsection (1) of this section by the rate of levy applicable to the property in the tax year. Then divide the product by the number of days in the year and multiply the quotient by the number of days remaining in the calendar year after the date of the destruction or reduction in value of the property. If taxes abated under this section have been

paid, the amount paid shall be refunded under RCW 84.69.020. For taxes levied for collection in 1998 and 1999, this subsection (2) applies to property that is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster. For taxes levied for collection in 2000 through 2004, this subsection (2) applies to property that is destroyed in whole or in part, or is in an area that has been declared a federal disaster area and has been reduced in value by more than twenty percent as a result of a natural disaster. This subsection (2) does not apply to taxes levied for collection in 2005 and thereafter.

(3) No reduction in the assessed value or abatements shall be made more than three years after the date of destruction or reduction in value.

(4) The assessor shall make such reduction on his or her own motion; however, the taxpayer may make application for reduction on forms prepared by the department and provided by the assessor. The assessor shall notify the taxpayer of the amount of reduction.

(5) If destroyed property is replaced prior to the valuation dates contained in RCW 36.21.080 and 36.21.090, the total taxable value for that assessment year shall not exceed the value as of the appropriate valuation date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

(6) The taxpayer may appeal the amount of reduction to the county board of equalization (~~within thirty days of notification or July 1st of the year of reduction; whichever is later~~) in accordance with the provisions of RCW 84.40.038. The board shall reconvene, if necessary, to hear the appeal.

NEW SECTION. Sec. 30. The following acts or parts of acts are each repealed:

(1) RCW 84.36.140 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Limitation—Proof of shipment) and 1972 ex.s. c 30 s 2 & 1961 c 15 s 84.36.140;

(2) RCW 84.36.150 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Listing and subsequent cancellation—Proof) and 1967 ex.s. c 149 s 32 & 1961 c 15 s 84.36.150;

(3) RCW 84.36.160 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Definitions) and 1972 ex.s. c 30 s 1, 1971 ex.s. c 137 s 1, & 1961 c 15 s 84.36.160;

(4) RCW 84.36.161 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Construction of RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.162—Effect on other acts) and 1998 c 311 s 21 & 1961 c 15 s 84.36.161;

(5) RCW 84.36.162 (Exemption of grains, flour, fruit, vegetables, fish, and unprocessed timber—Purpose) and 1961 c 15 s 84.36.162;

(6) RCW 84.36.176 (Plywood, hardboard and particle board panels in transit) and 1967 ex.s. c 149 s 34;

(7) RCW 84.36.181 (Ores, metals from out-of-state in process of reduction or refinement) and 1961 c 168 s 2;

(8) RCW 84.36.190 (Metals in cathode or bar form for sale and held under negotiable warehouse receipt) and 1961 c 15 s 84.36.190;

(9) RCW 84.36.191 (Metals in cathode or bar form for sale and held under negotiable warehouse receipt—Purpose and construction) and 1961 c 15 s 84.36.191;

(10) RCW 84.36.270 (Real property beneath air space dedicated to public body for stadium facilities) and 1973 1st ex.s. c 195 s 95 & 1967 ex.s. c 117 s 1;

(11) RCW 84.36.280 (Real property beneath air space dedicated to public body for stadium facilities—Exemption effective only on completion of construction of facility) and 1967 ex.s. c 117 s 2;

(12) RCW 84.36.290 (Real property beneath air space dedicated to public body for stadium facilities—Taxes for school purposes not affected) and 1967 ex.s. c 117 s 3;

(13) RCW 84.36.473 ("Business inventories" and "successor" defined) and 1998 c 311 s 23, 1983 1st ex.s. c 62 s 2, 1982 c 174 s 1, 1975 1st ex.s. c 291 s 8, & 1974 ex.s. c 169 s 4; and

(14) RCW 84.36.490 (Land, buildings, machinery, etc., used to manufacture alcohol fuel—Exceptions—Limitations—Claims—Administrative rules) and 1985 c 371 s 7 & 1980 c 157 s 1.

NEW SECTION. Sec. 31. The repeals in section 30 of this act do not affect any existing right acquired or liability or obligation incurred under the sections repealed or under any rule or order adopted under those sections, nor do they affect any proceeding instituted under those sections.

NEW SECTION. Sec. 32. Sections 29, 30, and 31 of this act take effect for taxes levied in 2001 for collection in 2002 and thereafter if the proposed amendment to Article VII, section 1 of the state Constitution providing for valuation increases to be phased in over a period of four years is validly submitted to and is approved and ratified by voters at the next general election. If the proposed amendment is not approved and ratified, sections 29, 30, and 31 of this act are null and void. If such proposed amendment is approved and ratified, sections 2 through 13, 16 through 19, and 21 through 28 of this act are null and void.

NEW SECTION. Sec. 33. This act applies for taxes levied in 2001 for collection in 2002 and thereafter.

Passed the House March 9, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 188

[House Bill 1706]

DIRECT PAY PERMITS

AN ACT Relating to granting the department of revenue the authority to issue direct pay permits; amending RCW 82.12.010, 82.08.050, and 82.12.040; adding a new section to chapter 82.32 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 programs to allow buyers to remit sales and use tax, rather than traditional collection and remittance by the seller of sales and use tax, can assist in tax compliance, ease administrative burdens, and reduce impacts on buyers and sellers. It is the intent of the legislature to grant the department of revenue the authority to permit certain buyers direct payment authority of tax in those instances where it can be shown, to the satisfaction of the department, that direct payment does not burden sellers and does not complicate administration for the department. Buyers authorized for direct payment will remit tax directly to the department, and will pay use tax on tangible personal property and sales tax on retail labor and/or services.

This act does not affect the requirements to use a resale certificate nor does it affect the business and occupation tax treatment of the seller.

NEW SECTION. Sec. 2. A new section is added to chapter 82.32 RCW to read as follows:

(1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if the taxpayer (i) is subject to mandatory use of electronic funds transfer under RCW 82.32.080; or (ii) makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director shall review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department shall approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and

responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department shall provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit shall furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, shall maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, shall return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

- (a) Purchases of meals or beverages;
- (b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;
- (c) Purchases for which a resale certificate may be used;

(d) Purchases that meet the definitions of RCW 82.04.050 (2) (e) and (f), (3) (a) through (d), (f), and (g), and (5); or

(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used.

Sec. 3. RCW 82.12.010 and 1994 c 93 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1)(a) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department of revenue may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall

be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under section 2 of this act, the value of the article used shall be determined by the retail selling price, as defined in RCW 82.08.010, of such article if but for the use of the direct pay permit the transaction would have been subject to sales tax;

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

(3) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(4) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(5) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services.

Sec. 4. RCW 82.08.050 and 1993 sp.s. c 25 s 704 are each amended to read as follows:

The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060. The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the

seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter shall be guilty of a gross misdemeanor.

In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer in good faith a properly executed resale certificate under RCW 82.04.470 or a copy of a direct pay permit issued under section 2 of this act.

The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

Sec. 5. RCW 82.12.040 and 1986 c 48 s I are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales, or making transfers of either possession or title or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed

under this chapter. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under section 2 of this act.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

NEW SECTION. Sec. 6. The code reviser shall place cross-reference sections to section 2 of this act in chapters 82.08, 82.12, and 82.14 RCW.

NEW SECTION. Sec. 7. This act takes effect August 1, 2001.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 189

[House Bill 1846]

DEPARTMENT OF NATURAL RESOURCES—ADMINISTRATIVE PROPERTY

AN ACT Relating to the exchange or sale and replacement of administrative property owned by the department of natural resources; and adding new sections to chapter 76.01 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 76.01 RCW to read as follows:

Except as provided in section 2 of this act, the department of natural resources may sell or exchange the light industrial facilities and land in Thurston county, known as the Lacey compound, which was acquired as an administrative site. This land and the facilities may be sold or exchanged for other lands and facilities in Thurston county, or counties adjacent to Thurston county, for use as an administrative site. The property may be exchanged for public or private property. The department is authorized to accept cash or expend cash from appropriated funds in order to balance a proposed exchange. Alternatively, the department may sell the Lacey compound at public auction or under RCW 79.01.009. The sale or exchange must be for at least market value. Transactions involving the construction of improvements must be conducted pursuant to Title 39 RCW, as applicable, and must comply with all other applicable laws and rules. Proceeds received from the sale or exchange of the Lacey compound must be deposited into the park land trust revolving fund to be used to acquire a replacement administrative site. Funds received from the exchange or sale that are not used to either replace or construct, or both, the administrative site must be deposited pursuant to RCW 76.01.030 or into the appropriate trust account as determined by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 76.01 RCW to read as follows:

Before proceeding with an exchange or sale of the Lacey compound site, the department of natural resources shall submit a proposal for an exchange or sale to the office of financial management for review and approval. The proposal shall include:

- (1) A determination of the ownership by trust of the Lacey compound site;
- (2) A determination of the market value of the Lacey compound site;
- (3) A determination of prospective proportional use of the future site based on function and an assessment of the financial responsibility for the new site based on the functional analysis; and
- (4) A financing plan for the future site based on prospective use.

The location of a future site is subject to the approval of the board of natural resources and the state capitol committee.

Any additional funding requirements shall be submitted for approval by the legislature by January 1, 2002.

Passed the House April 17, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 190

[Substitute House Bill 2049]

TECHNICAL ASSISTANCE PROGRAMS

AN ACT Relating to technical assistance programs; and amending RCW 43.05.040.

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

Sec. 1. RCW 43.05.040 and 1995 c 403 s 605 are each amended to read as follows:

(1) The owner and operator shall be given a reasonable period of time to correct violations identified during a technical assistance visit before any civil penalty provided for by law is imposed for those violations. A regulatory agency may revisit a facility, business, or other location after a technical assistance visit and a reasonable period of time has passed to correct violations identified by the agency in writing and issue civil penalties as provided for by law for any uncorrected violations.

(2) During a visit under subsection (1) of this section, the regulatory agency may not issue civil penalties for violations not previously identified in a technical assistance visit, unless the violations are of the type for which the agency may issue a citation: (a) During a technical assistance visit under RCW 43.05.050; or (b) under RCW 43.05.090.

Passed the House April 16, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 191

[Engrossed House Bill 1099]

PACE PROGRAMS

AN ACT Relating to the PACE program; adding a new section to chapter 74.09 RCW; adding a new section to chapter 48.01 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that PACE programs provide essential care to the frail elderly in the state of Washington. PACE serves to enhance the quality of life and autonomy for frail, older adults, maximize the dignity of and respect for older adults, enable frail and older adults to live in their homes and their community as long as medically possible, and preserve and support the older adult's family unit.

NEW SECTION. Sec. 2. A new section is added to chapter 74.09 RCW to read as follows:

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

(a) "PACE" means the program of all-inclusive care for the elderly, a managed care medicare/medicaid program authorized under sections 1894, 1905(a), and 1934 of the social security act and administered by the department.

(b) "PACE program agreement" means an agreement between a PACE organization, the health care financing administration, and the department.

(2) A PACE program may operate in the state only in accordance with a PACE program agreement with the department.

(3) A PACE program shall at the time of entering into the initial PACE program agreement, and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

(a) The cash reserves at a minimum shall equal the sum of:

(i) One month's total capitation revenue; and

(ii) One month's average payment to subcontractors.

(b) The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: Reasonable and sufficient net worth, insolvency insurance, or parental guarantees.

(4) A PACE program must provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or who are participants in the program.

NEW SECTION. Sec. 3. A new section is added to chapter 48.01 RCW to read as follows:

The activities and operations of PACE programs, as defined in section 2 of this act and as authorized under sections 1894, 1905(a), and 1934 of the social security act, when registered, certified, licensed, or otherwise recognized or designated as a PACE program by the Washington state department of social and health services, are exempt from the requirements of this title.

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 February 20, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 192

[Substitute House Bill 1259]

FOSTER CARE—INDEPENDENT LIVING SERVICES

AN ACT Relating to providing services for persons through twenty years of age, who are or who have been in foster care; amending RCW 74.13.031; and adding a new section to chapter 74.13 RCW.

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

Sec. 1. RCW 74.13.031 and 1999 c 267 s 8 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 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.

(13) Have authority to provide independent living services to youths, including individuals eighteen through twenty years of age, who are or have been in foster care.

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

Independent living services include assistance in achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, and obtaining and maintaining employment; and 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 recipient shall have a plan for achieving independent living skills by the time the recipient reaches age twenty-one. The plan shall be written within the first thirty days of placement and reviewed every

ninety days. A recipient 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 declared ineligible to receive services.

Passed the House April 16, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 193

[Substitute House Bill 2041]

BOARDING AND ADULT FAMILY HOMES—RESIDENT PROTECTION

AN ACT Relating to resident protection standards in boarding homes and adult family homes; amending RCW 74.39A.060, 18.20.185, 74.39A.080, 18.20.190, 70.128.160, 70.128.060, and 18.20.050; adding new sections to chapter 70.128 RCW; and adding a new section to chapter 18.20 RCW.

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

Sec. 1. RCW 74.39A.060 and 1999 c 176 s 34 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 vulnerable adult or adults allegedly 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.

(d) Substantiated complaints involving harm to a resident, if an applicable law or 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.))~~ After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license or contract suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents and to enforce compliance with this chapter.

(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.

Sec. 2. RCW 18.20.185 and 1997 c 392 s 214 are each amended to read as follows:

(1) The department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the department licenses.

(2) All facilities that are licensed under this chapter 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 department 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 department 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 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 allegedly harmed by the violations, and, in addition to facility staff, any available independent sources of relevant information, including if appropriate the family members of the resident.

(d) Substantiated complaints involving harm to a resident, if an applicable law or regulation has been violated, shall be subject to one or more of the actions provided in RCW 18.20.190. Whenever appropriate, the department shall also give consultation and technical assistance to the facility.

(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.))~~ After a department

finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(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 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 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 licensed under this chapter 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 licensed under this chapter 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.

Sec. 3. RCW 74.39A.080 and 1996 c 193 s 1 are each amended to read as follows:

(1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a provider of assisted living services, adult residential care services, or enhanced adult residential care services has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a contract;

(b) Impose reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a contract; or

(e) Suspend admissions to the facility by imposing stop placement on contracted services.

(3) When the department orders stop placement, the facility shall not admit any person admitted by contract until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have

been corrected; and (b) the provider exhibits the capacity to maintain (~~adequate care and service~~) correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing.

Sec. 4. RCW 18.20.190 and 2000 c 47 s 7 are each amended to read as follows:

(1) The department of social and health services is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a boarding home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated a boarding home without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the boarding home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any new resident until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain ~~((adequate care and service))~~ correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification. Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

Sec. 5. RCW 70.128.160 and 1995 1st sp.s. c 18 s 28 are each amended to read as follows:

(1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain ~~((adequate care and service))~~ correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement,

or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing.

NEW SECTION. Sec. 6. A new section is added to chapter 70.128 RCW to read as follows:

(1) When the department has summarily suspended a license, the licensee may, subject to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/ or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

(a) Provision of liability insurance to protect residents and their property;

(b) Preservation of resident trust funds;

(c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;

(d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and

(e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care ombudsman program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from

the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, the adult family home advisory committee established under chapter 18.48 RCW, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers.

NEW SECTION. Sec. 7. A new section is added to chapter 18.20 RCW to read as follows:

(1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution.

NEW SECTION. Sec. 8. A new section is added to chapter 70.128 RCW to read as follows:

(1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution.

Sec. 9. RCW 70.128.060 and 1995 c 260 s 4 are each amended to read as follows:

(1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) The department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation or nonrenewal of a license; or (b) the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more if the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed.

(10) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the

~~license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.~~

Sec. 10. RCW 18.20.050 and 2000 c 47 s 3 are each amended to read as follows:

Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards and rules adopted pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, but not to exceed twelve months, which provisional license shall not be subject to renewal. At the time of the application for or renewal of a license or provisional license the licensee shall pay a license fee as established by the department under RCW 43.20B.110. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed twelve months in duration. However, when the annual license renewal date of a previously licensed boarding home is set by the department on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of a license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

~~A licensee who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of a boarding home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the licensee, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the licensee relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.~~

Passed the House April 16, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 194

[Substitute House Bill 1042]

ELECTROLOGY AND TATTOOING—STERILIZATION PROCEDURES

AN ACT Relating to sterilization procedures in the commercial practices of electrology and tattooing; amending RCW 5.40.050; adding new sections to chapter 70.54 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 70.54 RCW to read as follows:

The legislature finds and declares that the practices of electrology and tattooing involve an invasive procedure with the use of needles and instruments which may be dangerous when improperly sterilized presenting a risk of infecting the client with bloodborne pathogens such as HIV and Hepatitis B. It is in the interests of the public health, safety, and welfare to establish requirements for the sterilization procedures in the commercial practices of electrology and tattooing in this state.

NEW SECTION. Sec. 2. A new section is added to chapter 70.54 RCW to read as follows:

The definitions in this section apply throughout sections 1, 3, and 4 of this act unless the context clearly requires otherwise.

(1) "Electrologist" means a person who practices the business of electrology for a fee.

(2) "Electrology" means the process by which hair is permanently removed through the utilization of solid needle/probe electrode epilation, including thermolysis, being of shortwave, high frequency type, and including electrolysis, being of galvanic type, or a combination of both which is accomplished by a superimposed or sequential blend.

(3) "Tattoo artist" means a person who practices the business of tattooing for a fee.

(4) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes.

NEW SECTION. Sec. 3. A new section is added to chapter 70.54 RCW to read as follows:

The secretary of health shall adopt by rule requirements for the sterilization of needles and instruments by electrologists and tattoo artists in accordance with nationally recognized professional standards. The secretary shall consider the universal precautions for infectious control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by the national environmental health association and the alliance of professional tattooists, in the adoption of these sterilization requirements.

NEW SECTION. Sec. 4. A new section is added to chapter 70.54 RCW to read as follows:

(1) Any person who practices electrology or tattooing shall comply with the rules adopted by the department of health under section 3 of this act.

(2) A violation of this section is a misdemeanor.

Sec. 5. RCW 5.40.050 and 1986 c 305 s 901 are each amended to read as follows:

A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, sterilization of needles and instruments used in tattooing or electrology as required under section 4 of this act, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se.

Passed the House April 16, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 195

[Substitute House Bill 1094]

HEALTH PROFESSIONS—LICENSES

AN ACT Relating to the surrender of a health care professional's license; and amending RCW 18.130.160.

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

Sec. 1. RCW 18.130.160 and 1993 c 367 s 6 are each amended to read as follows:

Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;

(8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request;

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer;

(12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

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

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

Passed the House April 19, 2001.

Passed the Senate April 18, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 196

[House Bill 1633]

INDIVIDUAL HEALTH INSURANCE—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to chapters 79 and 80, Laws of 2000; amending RCW 48.20.025, 48.41.030, 48.41.100, 48.41.110, 48.43.005, 48.43.012, 48.43.015, 48.43.018, 48.43.025, 48.44.017, 48.46.062, and 70.47.060; adding a new section to chapter 48.43 RCW; and declaring an emergency.

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

Sec. 1. RCW 48.20.025 and 2000 c 79 s 3 are each amended to read as follows:

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

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the

policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer shall file, for informational purposes only, a notice of its schedule of rates for its individual health benefit plans with the commissioner prior to use.

(3) An insurer shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any insurer (~~providing~~) issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is ~~((delivered to))~~ received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of ~~((the {this}))~~ this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.0201.

Sec. 2. RCW 48.41.030 and 2000 c 79 s 6 are each amended to read as follows:

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

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

- (4) "Commissioner" means the insurance commissioner.
- (5) "Covered person" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.
- (6) "Health care facility" has the same meaning as in RCW 70.38.025.
- (7) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.
- (8) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
- (9) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.
- (10) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, ~~((civilian health and medical program for the uniform services (CHAMPUS), 10 U.S.C. 55;))~~ limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.
- (11) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health coverage" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health coverage" in subsection (10) of this section.
- (12) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.
- (13) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).
- (14) "Member" means any commercial insurer which provides disability insurance or stop loss insurance, any health care service contractor, and any health maintenance organization licensed under Title 48 RCW. "Member" also means the Washington state health care authority as issuer of the state uniform medical plan.

"Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection (10) of this section.

(15) "Network provider" means a health care provider who has contracted in writing with the pool administrator or a health carrier contracting with the pool administrator to offer pool coverage to accept payment from and to look solely to the pool or health carrier according to the terms of the pool health plans.

(16) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(17) "Point of service plan" means a benefit plan offered by the pool under which a covered person may elect to receive covered services from network providers, or nonnetwork providers at a reduced rate of benefits.

(18) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

Sec. 3. RCW 48.41.100 and 2000 c 79 s 12 are each amended to read as follows:

(1) The following persons who are residents of this state are eligible for pool coverage:

(a) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(b) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(c) Any person who resides in a county of the state where no carrier or insurer (~~regulated~~) eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; and

(d) Any medicare eligible person upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on a medicare supplemental insurance policy under chapter 48.66 RCW, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums, However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out one million dollars in benefits;

(c) Inmates of public institutions and persons whose benefits are duplicated under public programs, However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(d) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(c) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(c) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(c) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a), (b), or (d) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(b) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

Sec. 4. RCW 48.41.110 and 2000 c 80 s 2 are each amended to read as follows:

(1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. Covered persons enrolled in the pool on January 1, 2001, may continue coverage under the pool plan in which they are enrolled on that date. However, the pool may incorporate managed care features into such existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of the pool policy in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policy issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of illnesses, injuries, and conditions which are not otherwise limited or excluded. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under the pool policy. Such benefits shall at minimum include, but not be limited to, the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty inpatient days in a calendar year, and limited to thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) The first twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners, in the case of mental or nervous conditions, and rendered by a state certified chemical dependency program approved under chapter 70.96A RCW, in the case of alcohol, drug, or chemical dependency or abuse;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not more than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

- (g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;
- (h) Oxygen;
- (i) Anesthesia services;
- (j) Prostheses, other than dental;
- (k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;
- (l) Diagnostic x-rays and laboratory tests;
- (m) Oral surgery limited to the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;
- (n) Maternity care services;
- (o) Services of a physical therapist and services of a speech therapist;
- (p) Hospice services;
- (q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and
- (r) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(4) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(5) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. The pool benefit policy cost shares and limitations must be consistent with those that are generally included in health plans approved by the insurance commissioner; however, no limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(6) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate

classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (7) of this section.

(7)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan (~~in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan~~), For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(8) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit.

Sec. 5. RCW 48.43.005 and 2000 c 79 s 18 are each amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(d).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

~~((4))~~ (5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand five hundred dollars and an annual out-of-pocket expense required to be

paid under the plan (other than for premiums) for covered benefits of at least three thousand dollars; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least five thousand five hundred dollars; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

~~((5))~~ (6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

~~((6))~~ (7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

~~((7))~~ (8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

~~((8))~~ (9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

~~((9))~~ (10) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

~~((10))~~ (11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

~~((+1))~~ (12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

~~((+2))~~ (13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

~~((+3))~~ (14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

~~((+4))~~ (15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

~~((+5))~~ (16) "Health care provider" or "provider" means:

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

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

~~((+6))~~ (17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((+7))~~ (18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

~~((+8))~~ (19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

- (c) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;
- (d) Disability income;
- (e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;
- (f) Workers' compensation coverage;
- (g) Accident only coverage;
- (h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;
- (i) Employer-sponsored self-funded health plans;
- (j) Dental only and vision only coverage; and
- (k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((19))~~ (20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

~~((20))~~ (21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((21))~~ (22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

~~((22))~~ (23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

~~((23))~~ (24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision except school districts, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for

the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. The term "small employer" includes a self-employed individual or sole proprietor. The term "small employer" also includes a self-employed individual or sole proprietor who derives at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year.

~~((24))~~ (25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

~~((25))~~ (26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Sec. 6. RCW 48.43.012 and 2000 c 79 s 19 are each amended to read as follows:

(1) No carrier may reject an individual for an individual health benefit plan based upon preexisting conditions of the individual except as provided in RCW 48.43.018.

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions except as provided in this section.

(3) For an individual health benefit plan originally issued on or after March 23, 2000, preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan. No carrier may impose a preexisting condition waiting period on an individual health benefit plan issued to an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.

(5) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially

discourage applications for coverage from individuals who are higher than average health risks. These provisions apply only to individuals who are Washington residents.

Sec. 7. RCW 48.43.015 and 2000 c 80 s 3 are each amended to read as follows:

~~(1) ((For a health benefit plan offered to a group other than a small group; every health carrier shall reduce any preexisting condition exclusion or limitation for persons or groups who had similar health coverage under a different health plan at any time during the three-month period immediately preceding the date of application for the new health plan if such person was continuously covered under the immediately preceding health plan. If the person was continuously covered for at least three months under the immediately preceding health plan; the carrier may not impose a waiting period for coverage of preexisting conditions. If the person was continuously covered for less than three months under the immediately preceding health plan, the carrier must credit any waiting period under the immediately preceding health plan toward the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.~~

~~—(2) For a health benefit plan offered to a small group; every health carrier shall reduce any preexisting condition exclusion or limitation for persons or groups who had similar health coverage under a different health plan at any time during the three-month period immediately preceding the date of application for the new health plan if such person was continuously covered under the immediately preceding health plan. If the person was continuously covered for at least nine months under the immediately preceding health plan, the carrier may not impose a waiting period for coverage of preexisting conditions. If the person was continuously covered for less than nine months under the immediately preceding health plan, the carrier must credit any waiting period under the immediately preceding health plan toward the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.~~

~~—(3)) For a health benefit plan offered to a group, every health carrier shall reduce any preexisting condition exclusion, limitation, or waiting period in the group health plan in accordance with the provisions of section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg).~~

~~(2) For a health benefit plan offered to a group other than a small group;~~

~~(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least three months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.~~

~~(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days~~

before the date of application for the new plan and such coverage was similar and continuous for less than three months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least nine months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than nine months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purpose of this subsection, a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(4) For a health benefit plan offered to an individual, other than an individual to whom subsection ((+)) (5) of this section applies, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, if application for coverage is made within ninety days of relocation; or (c) the person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider network; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered

under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection ~~((3))~~ (4), a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

~~((4))~~ (5) Every health carrier shall waive any preexisting condition waiting period in its individual plans for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

~~((5))~~ (6) Subject to the provisions of subsections (1) through ~~((4))~~ (5) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history.

Sec. 8. RCW 48.43.018 and 2000 c 80 s 4 are each amended to read as follows:

(1) Except as provided in (a) through (c) of this subsection, a health carrier may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage

applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan; and

(b) Within fifteen business days of receipt of a completed application, the carrier shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier shall accept the person for enrollment if he or she resides within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

Sec. 9. RCW 48.43.025 and 2000 c 79 s 23 are each amended to read as follows:

(1) For group health benefit plans for groups other than small groups, no carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that a carrier may impose a three-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment(~~(, or for which a prudent layperson would have sought advice or treatment,)) within three months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a~~

preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(2) For group health benefit plans for small groups, no carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions. Except that a carrier may impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment(~~(, or for which a prudent layperson would have sought advice or treatment,))~~) within six months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(3) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals or groups who are higher than average health risks. These provisions apply only to individuals who are Washington residents.

NEW SECTION. Sec. 10. A new section is added to chapter 48.43 RCW to read as follows:

To the extent required of the federal health insurance portability and accountability act of 1996, the eligibility of an employer or group to purchase a health benefit plan set forth in RCW 48.21.045(1)(b), 48.44.023(1)(b), and 48.46.066(1)(b) must be extended to all small employers and small groups as defined in RCW 48.43.005.

Sec. 11. RCW 48.44.017 and 2000 c 79 s 29 are each amended to read as follows:

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

(a) "Claims" means the cost to the health care service contractor of health care services, as defined in RCW 48.43.005, provided to a contract holder or paid to or on behalf of a contract holder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health care service contractor shall file, for informational purposes only, a notice of its schedule of rates for its individual contracts with the commissioner prior to use.

(3) A health care service contractor shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any health care service contractor (~~providing~~) issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in this state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is (~~delivered to~~) received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health care service contractor.

(c) Any dispute regarding the calculation of the actual loss ratio shall upon written demand of either the commissioner or the health care service contractor be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The health care service contractor shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the health care service contractor's individual health benefit plans under RCW 48.14.0201.

Sec. 12. RCW 48.46.062 and 2000 c 79 s 32 are each amended to read as follows:

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

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recouplements less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization shall file, for informational purposes only, a notice of its schedule of rates for its individual agreements with the commissioner prior to use.

(3) A health maintenance organization shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any health maintenance organization ~~((providing))~~ issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is ~~((delivered to))~~ received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health maintenance organization.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the health maintenance organization, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The health maintenance organization shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the health maintenance organization's individual health benefit plans under RCW 48.14.0201.

Sec. 13. RCW 70.47.060 and 2000 c 79 s 34 are each amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall

emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator.

(d) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the

administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for either subsidized enrollees, or nonsubsidized enrollees, or both. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall

adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the

insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(16) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(17) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

NEW SECTION. Sec. 14. 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 16, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 197

[Substitute House Bill 1661]

JUVENILE LIFE INSURANCE

AN ACT Relating to juvenile life insurance: adding a new section to chapter 48.23 RCW; and providing an effective date.

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

NEW SECTION. Sec. I. A new section is added to chapter 48.23 RCW to read as follows:

Life insurers shall develop and implement underwriting standards and procedures designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes. These standards and procedures shall be made available for review by the commissioner.

Life insurers shall maintain records of underwriting rejections of applications for life insurance on juvenile lives for a period of ten years.

NEW SECTION. Sec. 2. This act takes effect August 1, 2001.

Passed the House March 9, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 198

[House Bill 1855]

SPIRITS, BEER, AND WINE RESTAURANT LICENSES—RESTRICTED CLUBS

AN ACT Relating to liquor by the drink at special events at restricted clubs; and amending RCW 66.24.425.

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

Sec. 1. RCW 66.24.425 and 1998 c 126 s 7 are each amended to read as follows:

(1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license issued under this section that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement is an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours before the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

Passed the House March 12, 2001.
Passed the Senate April 10, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 199

[House Bill 1951]

WINE—SALE FOR OFF-PREMISES CONSUMPTION

AN ACT Relating to the sale of wine for off-premises consumption; and amending RCW 66.24.450, 66.24.452, 66.24.425, 66.24.400, and 66.24.570.

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

Sec. 1. RCW 66.24.450 and 1999 c 281 s 5 are each amended to read as follows:

(1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(7).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter is one hundred twenty dollars.

Sec. 2. RCW 66.24.452 and 1997 c 321 s 31 are each amended to read as follows:

(1) There shall be a beer and wine license to be issued to a private club for sale of beer and wine for on-premises consumption.

(2) Beer and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter is one hundred twenty dollars.

Sec. 3. RCW 66.24.425 and 1998 c 126 s 7 are each amended to read as follows:

(1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter is one hundred twenty dollars.

Sec. 4. RCW 66.24.400 and 1998 c 126 s 5 are each amended to read as follows:

(1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: PROVIDED, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping

accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: PROVIDED FURTHER, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter is one hundred twenty dollars.

Sec. 5. RCW 66.24.570 and 1997 c 321 s 36 are each amended to read as follows:

(1) There is a license for sports entertainment facilities to be designated as a sports/entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived.

(5) The board may issue an endorsement to the beer, wine, and spirits sports/entertainment facility license that allows the holder of a beer, wine, and spirits sports/entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter is one hundred twenty dollars.

Passed the House April 13, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 200

[House Bill 1523]

CODE CITIES

AN ACT Relating to reconciling conflicting provisions in laws pertaining to cities and towns; and amending RCW 35A.63.110 and 35A.40.090.

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

Sec. 1. RCW 35A.63.110 and 1979 ex.s. c 18 s 34 are each amended to read as follows:

A code city which pursuant to this chapter creates a planning agency and which has twenty-five hundred or more inhabitants, by ordinance, shall create a board of adjustment and provide for its membership, terms of office, organization, jurisdiction. A code city which pursuant to this chapter creates a planning agency and which has a population of less than twenty-five hundred may, by ordinance, similarly create a board of adjustment. In the event a code city with a population of less than twenty-five hundred creates a planning agency, but does not create a

board of adjustment, the code city shall provide that the city legislative authority shall itself hear and decide the items listed in subdivisions (1), (2), and (3) of this section. The action of the board of adjustment shall be final and conclusive, unless, within ~~((ten))~~ twenty-one days from the date of the action, the original applicant or an adverse party makes application to the superior court for the county in which that city is located for a writ of certiorari, a writ of prohibition, or a writ of mandamus. No member of the board of adjustment shall be a member of the planning agency or the legislative body. Subject to conditions, safeguards, and procedures provided by ordinance, the board of adjustment may be empowered to hear and decide:

(1) Appeals from orders, recommendations, permits, decisions, or determinations made by a code city official in the administration or enforcement of the provisions of this chapter or any ordinances adopted pursuant to it.

(2) Applications for variances from the terms of the zoning ordinance, the official map ordinance or other land-use regulatory ordinances under procedures and conditions prescribed by city ordinance, which among other things shall provide that no application for a variance shall be granted unless the board of adjustment finds:

(a) the variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(b) that such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

(c) that the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

(3) Applications for conditional-use permits, unless such applications are to be heard and decided by the planning agency. A conditional use means a use listed among those classified in any given zone but permitted to locate only after review as herein provided in accordance with standards and criteria set forth in the zoning ordinance.

(4) Such other quasi judicial and administrative determinations as may be delegated by ordinance.

In deciding any of the matters referred to in subsections (1), (2), (3), and (4) of this section, the board of adjustment shall issue a written report giving the reasons for its decision. If a code city provides for a hearing examiner and vests in him the authority to hear and decide the items listed in subdivisions (1), (2), and (3) of this section pursuant to RCW 35A.63.170, then the provisions of this section shall not apply to such a city.

Sec. 2. RCW 35A.40.090 and 1973 1st ex.s. c 195 s 29 are each amended to read as follows:

~~((No code city shall incur an indebtedness exceeding three-fourths of one percent of the value of the taxable property in such city without the assent of three-fifths of the voters therein voting at an election to be held for that purpose nor, with such assent, to exceed two and one-half percent of the value of the taxable property therein except as otherwise provided in chapter 39.36 RCW and subject to the provisions of this chapter and shall have the authority and be subject to the constitutional and/or statutory limitations relating to levy of taxes. The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015.))~~

The provisions of general law contained in chapter 39.36 RCW relating to municipal indebtedness shall be applicable to code cities.

Passed the House March 1, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 201

[Substitute House Bill 1678]

ADVANCE RIGHT-OF-WAY ACQUISITION

AN ACT Relating to advance right-of-way acquisition; amending RCW 43.79A.040, 47.44.010, 47.44.020, 47.44.050, and 47.24.020; adding new sections to chapter 47.26 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 47.26 RCW to read as follows:

The term "advance right-of-way acquisition" as used in this chapter means the acquisition of property and property rights, together with the engineering costs necessary for the advance right-of-way acquisition. Property or property rights purchased must be for projects approved by the transportation improvement board or the county road administration board as part of a city or county six-year plan or program.

NEW SECTION. Sec. 2. A new section is added to chapter 47.26 RCW to read as follows:

The city and county advance right-of-way revolving fund is created in the custody of the treasurer. The transportation improvement board is the administrator of the fund and may deposit directly and spend without appropriation.

The transportation improvement board and the county road administration board, in consultation with the association of Washington cities and the Washington association of counties, shall adopt reasonable rules and develop policies to implement this program.

NEW SECTION. Sec. 3. A new section is added to chapter 47.26 RCW to read as follows:

(1) After any properties or property rights are acquired through funds in the city and county advance right-of-way revolving fund, the acquiring city or county is responsible for the management of the properties in accordance with sound business practices and shall provide annual status reports to the board. Funds received by the city or county from the interim management of the properties must be deposited into the city and county advance right-of-way revolving fund.

(2) When the city or county proceeds with the construction of an arterial project that will require the use of any of the property so acquired, the city or county shall reimburse the city and county advance right-of-way revolving fund. Reimbursement must reflect the original cost of the acquired property or property rights required for the project plus an interest rate as determined annually by the board. The board shall report on the interest rate set to the transportation committees through its annual report.

(3) When the city or county determines that any properties or property rights acquired from funds in the city and county advance right-of-way revolving fund will not be required for an arterial construction project or the property has been held by the city or county for more than six years, the city or county shall either sell the property at fair market value or reimburse the fund at fair market value. All proceeds of the sale must be deposited in the city and county advance right-of-way revolving fund. At the board's discretion, a portion of savings on transportation improvement board projects realized through the use of the city and county advance revolving fund may be deposited back into the city and county advance right-of-way revolving fund.

(4) Deposits in the fund may be reexpended without further or additional appropriations.

Sec. 4. RCW 43.79A.040 and 2000 c 79 s 45 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 basic health plan self-insurance reserve account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust 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 city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

Sec. 5. RCW 47.44.010 and 1980 c 28 s 1 are each amended to read as follows:

(1) The department of transportation may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any state highway for the construction and maintenance of water pipes, flume, gas, oil or coal pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any structures or facilities ((which)) that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities. In order to minimize the disruption to traffic and damage to the roadway, the department is encouraged to develop a joint trenching policy with other affected jurisdictions so that all permittees and franchisees requiring access to ground under the roadway may do so at one time.

(2) All applications for ((such)) the franchise ((shall)) must be made in writing and subscribed by the applicant, and ((shall)) describe the state highway or portion thereof over which franchise is desired and the nature of the franchise. The application must also include the identification of all jurisdictions affected by the franchise and the names of other possible franchisees who should receive notice of the application for a franchise.

(3) The department of transportation shall adopt rules providing for a hearing or an opportunity for a hearing with reasonable public notice thereof with respect to any franchise application involving the construction and maintenance of utilities or other facilities within the highway right of way which the department determines may ~~((+))~~ (a) during construction, significantly disrupt the flow of traffic or use of driveways or other facilities within the right of way, or ~~((2))~~ (b) during or following construction, cause a significant and adverse effect upon the surrounding environment.

Sec. 6. RCW 47.44.020 and 1980 c 28 s 2 are each amended to read as follows:

(1) If the department of transportation deems it to be for the public interest, the franchise may be granted in whole or in part, with or without hearing under such regulations and conditions as the department may prescribe, with or without compensation, but not in excess of the reasonable cost for investigating, handling, and granting the franchise. The department may require that the utility and appurtenances be so placed on the highway that they will, in its opinion, least interfere with other uses of the highway.

(2) If a hearing is held, it ~~((shall))~~ must be conducted by the department, and may be adjourned from time to time until completed. The applicant may be required to produce all facts pertaining to the franchise, and evidence may be taken for and against granting it.

(3) The facility ~~((shall))~~ must be made subject to removal when necessary for the construction, alteration, repair, or improvement of the highway and at the expense of the franchise holder, except that the state shall pay the cost of ~~((such))~~ the removal whenever the state ~~((shall be))~~ is entitled to receive proportionate reimbursement therefor from the United States in the cases and in the manner set forth in RCW 47.44.030. Renewal upon expiration of a franchise ~~((shall))~~ must be by application.

(4) A person constructing or operating such a utility on a state highway is liable to any person injured thereby for any damages incident to the work of installation or the continuation of the occupancy of the highway by the utility, and except as provided above, is liable to the state for all necessary expenses incurred in restoring the highway to a permanent suitable condition for travel. A person constructing or operating such a utility on a state highway is also liable to the state for all necessary expenses incurred in inspecting the construction and restoring the pavement or other related transportation equipment or facilities to a permanent condition suitable for travel and operation in accordance with requirements set by the department. Permit and franchise holders are also financially responsible to the department for trenching work not completed within the contractual period and for compensating for the loss of useful pavement life caused by trenching. No franchise may be granted for a longer period than fifty years, and no exclusive franchise or privilege may be granted.

(5) The holder of a franchise granted under this section is financially responsible to the department for trenching work not completed within the period of the permit and for compensating for the loss of useful pavement life caused by trenching. In the case of common trenching operations, liability under this subsection will be assessed equally between the franchisees. The assessed parties may thereafter pursue claims of contribution or indemnity in accord with such fault as may be determined by arbitration or other legal action.

Sec. 7. RCW 47.44.050 and 1984 c 7 s 237 are each amended to read as follows:

(1) The department (~~(is empowered to)~~) may grant a permit to construct or maintain on, over, across, or along any state highway any water, gas, telephone, telegraph, light, power, or other such facilities when they do not extend along the state highway for a distance greater than three hundred feet. The department may require such information as it deems necessary in the application for any such permit, and may grant or withhold the permit within its discretion. Any permit granted may be canceled at any time, and any facilities remaining upon the right of way of the state highway after thirty days written notice of the cancellation (~~(is a~~)) are an unlawful obstruction and may be removed in the manner provided by law.

(2) The holder of a permit granted under this section is financially responsible to the department for trenching work not completed within the period of the permit and for compensating for the loss of useful pavement life caused by trenching. In the case of common trenching operations, liability under this subsection will be assessed equally between the permit holders. The assessed parties may thereafter pursue claims of contribution or indemnity in accord with such fault as may be determined by arbitration or other legal action.

Sec. 8. RCW 47.24.020 and 1993 c 126 s 1 are each amended to read as follows:

The jurisdiction, control, and duty of the state and city or town with respect to such streets (~~(shall be)~~) is as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used

for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets. However, pavement trenching and restoration performed as part of installation of such facilities must meet or exceed requirements established by the department;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction. Pavement trenching and restoration performed under a privilege granted by the city under this subsection must meet or exceed requirements established by the department;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of twenty-two thousand five hundred or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right of way to protect the roadway itself. When the population of a city or town first exceeds twenty-two thousand five hundred according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws and rules, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility (~~shall~~) must require the grantee or permittee to restore, repair, and replace (~~to its original condition~~) any portion of the street damaged or injured by it to conditions that meet or exceed requirements established by the department;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of twenty-two thousand five hundred or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of twenty-two thousand five hundred according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town first exceeds twenty-two thousand five hundred according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights of way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights of way

may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights of way so acquired shall vest in the city or town: PROVIDED, That no vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the department; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town.

****NEW SECTION. Sec. 9. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2001, in the transportation appropriations act, this act is null and void.***

*Sec. 9 was vetoed. See message at end of chapter.

Passed the House April 13, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor May 7, 2001, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 7, 2001.

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

"I am returning herewith, without my approval as to section 9, Substitute House Bill No. 1678 entitled:

"AN ACT Relating to advance right-of-way acquisition;"

Substitute House Bill No. 1678 creates the city and county advance right of way revolving fund. This account was recommended by the Blue Ribbon Commission on Transportation, and will allow local governments to acquire land in advance of construction, as funds become available. This has proved to be a very effective tool at the state level, allowing construction to start as soon as construction funding is available.

Section 9 of the bill would have rendered the fund null and void if there is no appropriation for the fund in this year's biennial transportation budget. I strongly support the revolving fund, and have recommended an appropriation in my transportation budget proposal. I urge the legislature to do the same. Clearly, the merits of this bill extend beyond June 30th of this year.

For these reasons I have vetoed section 9 of Substitute House Bill No. 1678.

With the exception of section 9, Substitute House Bill No. 1678 is approved."

CHAPTER 202

[House Bill 1750]

STREET VACATIONS

AN ACT Relating to street vacations; and amending RCW 35.79.030.

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

Sec. I. RCW 35.79.030 and 1987 c 228 s 1 are each amended to read as follows:

The hearing on such petition may be held before the legislative authority, or before a committee thereof upon the date fixed by resolution or at the time said hearing may be adjourned to. If the hearing is before such a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If such hearing be held before such a committee it shall not be necessary to hold a hearing on the petition before such legislative authority. If the legislative authority determines to grant said petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated(~~(, except in the event the subject property or portions thereof were acquired at public expense, compensation may be required in an amount equal to the full appraised value of the vacation. PROVIDED, That such)), If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated, must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town.~~

Passed the House April 18, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 203

[Substitute House Bill 1135]
POWERS OF ATTORNEY

AN ACT Relating to powers of attorney; amending RCW 11.94.040, 11.96A.040, 11.96A.050, 11.96A.120, and 11.94.050; and adding new sections to chapter 11.94 RCW.

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

NEW SECTION. Sec. 1. (1) An appointment of a principal's spouse as attorney in fact, including appointment as successor or co-attorney in fact, under a power of attorney shall be revoked upon entry of a decree of dissolution or legal separation or declaration of invalidity of the marriage of the principal and the attorney in fact, unless the power of attorney or the decree provides otherwise. The effect of this revocation shall be as if the spouse resigned as attorney in fact, or if named as successor attorney in fact, renounced the appointment, as of the date of entry of the decree or declaration, and the power of attorney shall otherwise remain in effect with respect to appointments of other persons as attorney in fact for the principal or procedures prescribed in the power of attorney to appoint other persons, and any terms relating to service by persons as attorney in fact.

(2) This section applies to all decrees of dissolution and declarations of invalidity of marriage entered after the effective date of this act.

Sec. 2. RCW 11.94.040 and 1985 c 30 s 28 are each amended to read as follows:

(1) Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability (~~thereby~~).

(2) If the attorney in fact presents the power of attorney to a third person and requests the person to accept the attorney in fact's authority to act for the principal, and also presents to the person an acknowledged affidavit or declaration signed under penalty of perjury in the form designated in RCW 9A.72.085, signed and dated contemporaneously with presenting the power of attorney, which meets the requirements of subsection (3) of this section, and the person accepting the power of attorney has examined the power of attorney and confirmed the identity of the attorney in fact, then the person's reliance on the power of attorney is presumed to be without negligence and in good faith in reasonable reliance, which presumption may be rebutted by clear and convincing evidence that the person accepting the power of attorney knew or should have known that one or more of the material statements in the affidavit is untrue. It shall not be found that an organization knew or should have known of circumstances that would revoke or terminate the power of attorney or limit or modify the authority of the attorney in fact, unless the individual accepting the power of attorney on behalf of the organization knew or should have known of the circumstances.

(3) An affidavit presented pursuant to subsection (2) of this section shall state that:

(a) The person presenting himself or herself as the attorney in fact and signing the affidavit or declaration is the person so named in the power of attorney;

(b) If the attorney in fact is named in the power of attorney as a successor attorney in fact, the circumstances or conditions stated in the power of attorney that would cause that person to become the acting attorney in fact have occurred;

(c) To the best of the attorney in fact's knowledge, the principal is still alive;

(d) To the best of the attorney in fact's knowledge, at the time the power of attorney was signed, the principal was competent to execute the document and was not under undue influence to sign the document;

(e) All events necessary to making the power of attorney effective have occurred;

(f) The attorney in fact does not have actual knowledge of the revocation, termination, limitation, or modification of the power of attorney or of the attorney in fact's authority;

(g) The attorney in fact does not have actual knowledge of the existence of other circumstances that would limit, modify, revoke, or terminate the power of attorney or the attorney in fact's authority to take the proposed action;

(h) If the attorney in fact was married to the principal at the time of execution of the power of attorney, then at the time of signing the affidavit or declaration, the marriage of the principal and the attorney in fact has not been dissolved or declared invalid; and

(i) The attorney in fact is acting in good faith pursuant to the authority given under the power of attorney.

(4) Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not prevent a party from reasonably relying on the document.

(5) Unless the document contains a requirement that it be filed for record to be effective, a person (~~shall~~) may place reasonable reliance on it regardless of whether it is so filed.

NEW SECTION. Sec. 3. (1) A person designated in section 4 of this act may file a petition requesting that the court:

(a) Determine whether the power of attorney is in effect or has terminated;

(b) Compel the attorney in fact to submit the attorney in fact's accounts or report the attorney in fact's acts as attorney in fact to the principal, the spouse of the principal, the guardian of the person or the estate of the principal, or to any other person required by the court in its discretion, if the attorney in fact has failed to submit an accounting or report within sixty days after written request from the person filing the petition, however, a government agency charged with the protection of vulnerable adults may file a petition upon the attorney in fact's refusal or failure to submit an accounting upon written request and shall not be required to wait sixty days;

(c) Ratify past acts or approve proposed acts of the attorney in fact;

(d) Order the attorney in fact to exercise or refrain from exercising authority in a power of attorney in a particular manner or for a particular purpose;

(e) Modify the authority of an attorney in fact under a power of attorney;

(f) Remove the attorney in fact on a determination by the court of both of the following:

(i) The attorney in fact has violated or is unfit to perform the fiduciary duties under the power of attorney; and

(ii) The removal of the attorney in fact is in the best interest of the principal;

(g) Approve the resignation of the attorney in fact and approve the final accountings of the resigning attorney in fact if submitted, subject to any orders the court determines are necessary to protect the principal's interests;

(h) Confirm the authority of a successor attorney in fact to act under a power of attorney upon removal or resignation of the previous attorney in fact;

(i) Compel a third person to honor the authority of an attorney in fact, provided that a third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances;

(j) Order the attorney in fact to furnish a bond in an amount the court determines to be appropriate.

(2) The petition shall contain a statement identifying the principal's known immediate family members, and any other persons known to petitioner to be interested in the principal's welfare or the principal's estate, stating which of said persons have an interest in the action requested in the petition and explaining the determination of who is interested in the petition.

NEW SECTION. Sec. 4. (1) A petition may be filed under section 3 of this act by any of the following persons:

(a) The attorney in fact;

(b) The principal;

(c) The spouse of the principal;

(d) The guardian of the estate or person of the principal; or

(e) Any other interested person, as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary, and that the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests.

(2) Notwithstanding section 1 of this act, the principal may specify in the power of attorney by name certain persons who shall have no authority to bring a petition under section 3 of this act with respect to the power of attorney. This provision is enforceable:

(a) If the person so named is not at the time of filing the petition the guardian of the principal;

(b) If at the time of signing the power of attorney the principal was represented by an attorney who advised the principal regarding the power of attorney and who signed a certificate at the time of execution of the power of attorney, stating that the attorney has advised the principal concerning his or her rights, the applicable law, and the effect and consequences of executing the power of attorney; or

(c) If (a) and (b) of this subsection do not apply, unless the person so named can establish that the principal was unduly influenced by another or under mistaken beliefs when excluding the person from the petition process, or unless the person named is a government agency charged with protection of vulnerable adults.

NEW SECTION. Sec. 5. In ruling on a petition filed under section 3 of this act and ordering any relief, the court must consider the best interests of the principal and will order relief that is the least restrictive to the exercise of the power of attorney while still adequate in the court's view to serve the principal's best interests. Upon entry of an order ruling on a petition, the court's oversight of the attorney in fact's actions and of the operation of the power of attorney ends unless another petition is filed under this chapter or unless the order specifies further court involvement that is necessary for a resolution of the issues raised in the petition.

NEW SECTION. Sec. 6. In any proceeding commenced by the filing of a petition under section 3 of this act by a person other than the attorney in fact, the court may in its discretion award costs, including reasonable attorneys' fees, to any person participating in the proceedings from any other person participating in the proceedings, or from the assets of the principal, as the court determines to be equitable. In determining what is equitable in making the award, the court must consider whether the petition was filed without reasonable cause, and order costs and fees paid by the attorney in fact individually only if the court determines that the attorney in fact has clearly violated his or her fiduciary duties or has refused without justification to cooperate with the principal or the principal's guardian or personal representative. In a proceeding to compel a third party to accept a power of attorney, the court may order costs, including reasonable attorneys' fees, to be paid by the third party only if the court determines that the third party did not have a good faith concern that the attorney in fact's exercise of authority would be improper. To the extent this section is inconsistent with RCW 11.96A.150, this section controls the award of costs and attorneys' fees in proceedings brought under section 3 of this act.

NEW SECTION. Sec. 7. The provisions of chapter 11.96A RCW, except for RCW 11.96A.260 through 11.96A.320, are applicable to proceedings commenced by the filing of a petition under section 3 of this act.

NEW SECTION. Sec. 8. (1) The following persons are entitled to notice of hearing on any petition under section 3 of this act:

- (a) The principal;
- (b) The principal's spouse;
- (c) The attorney in fact;
- (d) The guardian of the estate or person of the principal;
- (e) Any other person identified in the petition as being interested in the action requested in the petition, or identified by the court as having a right to notice of the

hearing. If a person would be excluded from bringing a petition under section 4(2) of this act, then that person is not entitled to notice of the hearing.

(2) Notwithstanding subsection (1) of this section, if the whereabouts of the principal are unknown or the principal is otherwise unavailable to receive notice, the court may waive the requirement of notice to the principal, and if the principal's spouse is similarly unavailable to receive notice, the court may waive the requirement of notice to the principal's spouse.

(3) Notice must be given as required under chapter 11.96A RCW, except that the parties entitled to notice shall be determined under this section.

Sec. 9. RCW 11.96A.040 and 1999 c 42 s 201 are each amended to read as follows:

(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; administer and settle matters that relate to powers of attorney; 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.

Sec. 10. RCW 11.96A.050 and 1999 c 42 s 202 are each amended to read as follows:

(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) Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal's residence, except for good cause shown.

~~(6)~~ If venue is moved, an action taken before venue is changed is not invalid because of the venue.

~~((6))~~ (7) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

Sec. 11. RCW 11.96A.120 and 1999 c 42 s 305 are each amended to read as follows:

(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 or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the

same interest, or a share in it, is to pass to the surviving spouse or 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 or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall 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.

Sec. 12. RCW 11.94.050 and 1989 c 87 s 1 are each amended to read as follows:

(1) Although a designated attorney in fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney in fact or agent shall have all the powers the principal would have if alive and competent, the attorney in fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's ((wills, codicils,)) life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney in fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

NEW SECTION. Sec. 13. Sections 1 and 3 through 8 of this act are each added to chapter 11.94 RCW.

Passed the House April 16, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 204

[Substitute House Bill 1234]

APPRENTICESHIPS

AN ACT Relating to revising apprenticeship law to respond to a 1999 United States department of labor audit; and amending RCW 49.04.010, 49.04.030, 49.04.040, 49.04.050, 49.04.060, 49.04.080, 49.04.100, and 28B.50.880.

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

Sec. 1. RCW 49.04.010 and 1984 c 287 s 97 are each amended to read as follows:

The director of labor and industries shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The governor shall appoint a public member to the apprenticeship council for a three-year term. The appointment of the public member is subject to confirmation by the senate. Each member shall hold office until ~~((his))~~ a successor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. ~~((The state official who has been designated by the commission for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service))~~ A designated representative from each of the following: The work force training and education coordinating board, state board for community and technical colleges, employment security department, and United States department of labor, apprenticeship, training, employer, and labor services, shall be ex officio ((be)) members of ((said)) the apprenticeship council((-without)). Ex officio members shall have no vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240. The apprenticeship council ~~((with the consent of employee and employer groups shall: (1) Establish standards for apprenticeship agreements in conformity with the provisions of this chapter; (2)))~~ is authorized to approve apprenticeship programs, and establish apprenticeship program standards as rules, including requirements for apprentice-

~~related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The council shall consider recommendations from the state board for community and technical colleges on matters of apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The rules for apprenticeship instructor qualifications shall either be by reference or reasonably similar to the applicable requirements established by or pursuant to chapter 28B.50 RCW. The council is further authorized to issue such rules ((and regulations)) as may be necessary to carry out the intent and purposes of this chapter, including a procedure to resolve an impasse should a tie vote of the council occur((, and (3))), and perform such other duties as are hereinafter imposed.~~

Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public.

Sec. 2. RCW 49.04.030 and 1979 ex.s. c 37 s 2 are each amended to read as follows:

Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote ~~((the making of))~~ apprenticeship ~~((agreements))~~ programs conforming to the standards established ~~((by or in accordance with))~~ under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state ~~((joint))~~ apprenticeship committees; (3) when ~~((so))~~ authorized by the apprenticeship council, register ~~((such))~~ apprenticeship agreements ~~((as))~~ that are in the best interests of the apprentice and conform ~~((to the))~~ with standards established ~~((by or in accordance with))~~ under this chapter; (4) keep a record of apprenticeship agreements and upon ~~((performance thereof))~~ successful completion issue certificates of completion of apprenticeship; and (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of ~~((such))~~ the agreements~~((, and who (6)))~~.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally ~~((or in accordance with the established trade procedure:~~

~~— Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the commission for vocational education and its local recognized agency for vocational education)). The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the ((apprenticeship council and the)) supervisor of apprenticeship in the execution of ((their)) the supervisor's functions under this chapter.~~

Sec. 3. RCW 49.04.040 and 1941 c 231 s 3 are each amended to read as follows:

~~((Local and state joint))~~ Upon the effective date of this act, all newly approved apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted by the apprenticeship council, and 29 C.F.R. Part 29 and must be approved by the apprenticeship council. Apprenticeship committees may be approved~~((, in any trade or group of trades, in cities or trade areas, by the apprenticeship council;))~~ whenever the apprentice training needs ~~((of such trade or group of trades justifies))~~ justify such establishment. Such ~~((local or state joint))~~ apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen;

~~(1) From names submitted by the respective local or state employer and employee organizations ((in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employer and of employees respectively, or a state joint apprenticeship committee may be approved as, or))~~ served by the apprenticeship committee; or

~~(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act ((itself)) as the ((joint committee in such trade or group of trades))~~ apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

~~((Subject to the review of the council and in accordance with the standards established by this chapter and by the council, such))~~ Apprenticeship committees shall devise standards for apprenticeship ((agreements)) programs and ((give such aid as may be necessary in their operation in their respective trades and localities)) operate such programs in accordance with the standards established by this chapter and by council-adopted rules. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants.

Sec. 4. RCW 49.04.050 and 1979 ex.s. c 37 s 3 are each amended to read as follows:

~~((Standards of apprenticeship agreements are as follows:~~

~~— (1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which shall be not less than two thousand hours of reasonably continuous employment;~~

~~— (2) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;~~

~~— (3) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.~~

~~— (4) A statement of the age of the apprentice which may not be less than sixteen years of age.~~

~~— (5) A statement of the progressively increasing scale of wages to be paid the apprentice.~~

~~— (6) Provision for a period of probation during which the apprenticeship council or the supervisor of apprenticeship may terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period the apprenticeship council, or the supervisor of apprenticeship, under the procedure approved by the council, shall be empowered to terminate the apprenticeship agreement in accordance with the provisions of such agreement.~~

~~— (7) Provision that the services of the supervisor and the apprenticeship council may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.~~

~~— (8) Provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer.~~

~~— (9) Such additional standards as may be prescribed in accordance with the provisions of this chapter.)~~

To be eligible for registration, apprenticeship program standards must conform to the rules adopted by the apprenticeship council.

Sec. 5. RCW 49.04.060 and 1941 c 231 s 5 are each amended to read as follows:

For the purposes of this chapter an apprenticeship agreement is((:

~~— (1) An individual written agreement between an employer and apprentice, or (2) a written agreement between an employer, or an association of employers, and an organization of employees describing conditions of employment for apprentices, or (3) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.~~

~~— All such agreements shall conform to the basic standards and other provisions of this chapter)) a written agreement between an apprentice and either the apprentice's employer or employers, or an apprenticeship committee acting as agent for an employer or employers, containing the terms and conditions of the employment and training of the apprentice.~~

Sec. 6. RCW 49.04.080 and 1963 c 172 s 1 are each amended to read as follows:

Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor of apprenticeship shall encourage and promote the making of such other types of on-the-job training agreements and projects, in addition to apprenticeship agreements, as ((he in his discretion)) the supervisor shall find meritorious.

Sec. 7. RCW 49.04.100 and 1995 c 67 s 7 are each amended to read as follows:

~~((Joint)) As provided by the rules adopted by the apprenticeship council, apprenticeship programs entered into under authority of this chapter ((49.04 RCW and which receive any state assistance in instructional or other costs, shall include entrance of women and racial minorities in such program, when available, in a ratio not less than the percentage of the minority race and female (minority and nonminority) labor force in the program sponsor's labor market area, based on current census figures issued by the office of financial management with the ultimate goal of obtaining the proportionate ratio of representation in the total program membership. Where minimum standards have been set for entering upon any such apprenticeship program, this woman and racial minority representation shall be filled when women and racial minority applicants have met such minimum standards and irrespective of individual ranking among all applicants seeking to enter the program. PROVIDED, That nothing in RCW 49.04.100 through 49.04.130 will affect the total number of entrants into the apprenticeship program or modify the dates of entrance both as established by the joint apprenticeship committee. Racial minority for the purposes of RCW 49.04.130 shall include African Americans, Asian Pacific Americans, Hispanic Americans, American Indians, Filipinos, and all other racial minority groups)) with five or more apprentices shall conform with 29 C.F.R. Part 30 to the extent required by federal law while advancing the nondiscriminatory principles of the Washington state civil rights act. RCW 49.60.400.~~

Sec. 8. RCW 28B.50.880 and 1991 c 238 s 111 are each amended to read as follows:

~~((Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the state board for community and technical colleges and its local community and technical colleges:)) The state board for community and technical colleges shall provide recommendations to the apprenticeship council and apprenticeship programs, established under chapter 49.04 RCW, on matters of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the qualification of teachers for such instruction.~~

Passed the House March 14, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 205

[Substitute House Bill 1282]

UNIFORM LEGISLATION COMMISSION—CODE REVISER

AN ACT Relating to the uniform legislation commission; adding a new section to chapter 43.56 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.56 RCW to read as follows:

The code reviser shall serve as an additional member of the board of commissioners.

NEW SECTION. Sec. 2. This act takes effect August 1, 2001.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 206

[House Bill 1584]

VEHICLE LICENSE RENEWALS

AN ACT Relating to vehicle license renewals; and amending RCW 46.16.210.

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

Sec. 1. RCW 46.16.210 and 1997 c 241 s 8 are each amended to read as follows:

(1) Upon receipt of the application and proper fee for original vehicle license, the director shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county auditor or other agent to effectively secure the correction of such error, who shall return the same corrected to the director.

(2) Application for the renewal of a vehicle license shall be made to the director or his agents, including county auditors, by the registered owner on a form prescribed by the director. The application must be accompanied by ~~((the certificate of registration for the last registration period in which the vehicle was registered in Washington unless the applicant submits a preprinted application mailed from Olympia, and))~~ the payment of such license fees and excise tax as may be required by law. Such application shall be handled in the same manner and the fees transmitted to the state treasurer in the same manner as in the case of an original application. Any such application which upon validation becomes a renewal certificate need not have entered upon it the name of the lien holder, if any, of the vehicle concerned.

(3) Persons expecting to be out of the state during the normal renewal period of a vehicle license may secure renewal of such vehicle license and have license plates or tabs preissued by making application to the director or his agents upon forms prescribed by the director. The application must be accompanied by ~~((the certificate of registration for the last registration period in which the vehicle was registered in Washington and be accompanied by))~~ such license fees, and excise tax as may be required by law.

(4) Application for the annual renewal of a vehicle license number plate to the director or the director's agents shall not be required for those vehicles owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington or a governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior.

Passed the House March 9, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 207

[House Bill 1694]

UNLICENSED PRACTICE OF A PROFESSION OR BUSINESS

AN ACT Relating to unlicensed practice of a profession or business; reenacting and amending RCW 9.94A.320; reenacting RCW 18.130.190; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlicensed practice of a profession or a business, enacted as section 35, chapter 285, Laws of 1995.

Sec. 2. RCW 18.130.190 and 1995 c 285 s 35 are each reenacted to read as follows:

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed

practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

Sec. 3. RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and 2000 c 66 s 2 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))

- Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
- XIII Malicious explosion 2 (RCW 70.74.280(2))
Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)
- XI Manslaughter 1 (RCW 9A.32.060)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Malicious explosion 3 (RCW 70.74.280(3))
Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- IX Assault of a Child 2 (RCW 9A.36.130)
Controlled Substance Homicide (RCW 69.50.415)
Explosive devices prohibited (RCW 70.74.180)
Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
Malicious placement of an explosive 2 (RCW 70.74.270(2))
Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from

- Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Theft of Anhydrous Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- 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))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)

- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)

- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- Malicious Harassment (RCW 9A.36.080)
- 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))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)

- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))

- Malicious Injury to Railroad Property (RCW 81.60.070)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Malicious Mischief 1 (RCW 9A.48.070)
- 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))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7) (as reenacted by this act))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- 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))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Use of Food Stamps (RCW 9.91.140
(2) and (3))
Vehicle Prowl 1 (RCW 9A.52.095)

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 16, 2001.
Passed the Senate April 11, 2001.
Approved by the Governor May 7, 2001.
Filed in Office of Secretary of State May 7, 2001.

CHAPTER 208

[House Bill 1770]

CAMPAIGN CONTRIBUTIONS—LOSING CANDIDATE

AN ACT Relating to contributions made to a candidate who loses a primary; and amending RCW 42.17.640.

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

Sec. 1. RCW 42.17.640 and 1995 c 397 s 20 are each amended to read as follows:

(1) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office that in the aggregate exceed five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed one thousand dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, during a recall campaign that in the aggregate exceed five hundred dollars if for a state legislative office or one thousand dollars if for a state office other than a state legislative office.

(3)(a) Notwithstanding subsection (1) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) fifty cents multiplied by the

number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed twenty-five cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, during a recall campaign that in the aggregate exceed (i) fifty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No state official against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of a state official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(5) For purposes of determining contribution limits under subsections (3) and (4) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(6) Notwithstanding subsections (1) through (4) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed five hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed two thousand five hundred dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(7) For the purposes of RCW 42.17.640 through 42.17.790, a contribution to the authorized political committee of a candidate, or of a state official against whom recall charges have been filed, is considered to be a contribution to the candidate or state official.

(8) A contribution received within the twelve-month period after a recall election concerning a state office is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(9) The contributions allowed by subsection (2) of this section are in addition to those allowed by subsection (1) of this section, and the contributions allowed by subsection (4) of this section are in addition to those allowed by subsection (3) of this section.

(10) RCW 42.17.640 through 42.17.790 apply to a special election conducted to fill a vacancy in a state office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(11) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(12) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate, state official against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of a state official if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the state official.

(13) No person may accept contributions that exceed the contribution limitations provided in this section.

(14) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates; or

(b) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates.

Passed the House April 13, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 209

[Substitute House Bill 1643]

VOLUNTEER LIABILITY

AN ACT Relating to liability of volunteers; and adding a new section to chapter 4.24 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, a volunteer of a nonprofit organization or governmental entity shall not be personally liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:

(a) The volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(b) If appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(c) The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer;

(d) The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance; and

(e) The nonprofit organization carries public liability insurance covering the organization's liability for harm caused to others for which it is directly or vicariously liable of not less than the following amounts:

(i) For organizations with gross revenues of less than twenty-five thousand dollars, at least fifty thousand dollars due to the bodily injury or death of one person or at least one hundred thousand dollars due to the bodily injury or death of two or more persons;

(ii) For organizations with gross revenues of twenty-five thousand dollars or more but less than one hundred thousand dollars, at least one hundred thousand dollars due to the bodily injury or death of one person or at least two hundred thousand dollars due to the bodily injury or death of two or more persons;

(iii) For organizations with gross revenues of one hundred thousand dollars or more, at least five hundred thousand dollars due to bodily injury or death.

(2) Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of the organization or entity.

(3) Nothing in this section shall be construed to affect the liability, or vicarious liability, of any nonprofit organization or governmental entity with respect to harm caused to any person, including harm caused by the negligence of a volunteer.

(4) Nothing in this section shall be construed to apply to the emergency workers registered in accordance with chapter 38.52 RCW nor to the related volunteer organizations to which they may belong.

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

(a) "Economic loss" means any pecuniary loss resulting from harm, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities.

(b) "Harm" includes physical, nonphysical, economic, and noneconomic losses.

(c) "Noneconomic loss" means loss for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium other than loss of domestic service, hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(d) "Nonprofit organization" means: (i) Any organization described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and exempt from tax under section 501(a) of the internal revenue code; (ii) any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes; or (iii) any organization described in section 501(c)(14)(A) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(14)(A)) and exempt from tax under section 501(a) of the internal revenue code.

(e) "Volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, other than reasonable reimbursement or allowance for expenses actually incurred, or any other thing of value, in excess of five hundred dollars per year. "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 210

[Substitute House Bill 1884]

TELECOMMUNICATIONS DEVICES--HEARING AND SPEECH IMPAIRED

AN ACT Relating to telecommunications devices and services for the hearing or speech impaired; and amending RCW 43.20A.720 and 43.20A.725.

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

Sec. 1. RCW 43.20A.720 and 1992 c 144 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 43.20A.725.

(1) "Hearing impaired" means those persons who are certified to be deaf, deaf-blind, or hard of hearing, and those persons who are certified to have a hearing disability limiting their access to telecommunications.

(2) "Speech impaired" means persons who are certified to be unable to speak or who are certified to have a speech impairment limiting their access to telecommunications.

~~("Text telephone (TT)," formerly known as a telecommunications device for the deaf (TDD) means a telecommunications device that has a typewriter or computer keyboard and a readable display that couples with the telephone, allowing messages to be typed rather than spoken. The device allows a person to make a telephone call directly to another person possessing similar equipment. The conversation is typed through one machine to the other machine instead of spoken.~~

~~"Telecommunications relay service (TRS)" is a service for hearing and speech impaired people who have a TT to call someone who does not have a TT or vice versa. The service consists of several telephones being utilized by TRS communications assistants who receive either TT or voice phone calls. If a TRS communications assistant receives a phone call from a hearing or speech impaired person wishing to call a hearing person, the operator will call the hearing person and act as an intermediary by translating what is displayed on the TT to voice and typing what is voiced into the TT to be read by the hearing or speech impaired caller. This process can also be reversed with a hearing person calling a deaf person through the telecommunications relay service. "TRS program" as used in this chapter includes both the relay function and TTs.~~

~~"Qualified trainer" is a person who is knowledgeable about TTs, signal devices, and amplifying accessories; familiar with the technical aspects of equipment designed to meet hearing impaired people's needs; and is fluent in American sign language.~~

~~"Qualified contractor" shall have staff bilingual in American sign language and standard English available for quality language/cultural interpretations; quality training of operators; and policies, training, and operational procedures to be determined by the office.~~

~~— "The department" means the department of social and health services of the state of Washington.))~~

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

~~(4) "Office" means the office of deaf ((services)) and hard of hearing within the state department of social and health services.~~

Sec. 2. RCW 43.20A.725 and 1998 c 245 s 59 are each amended to read as follows:

(1) ~~The department, through the sole authority of the office or its successor organization, shall maintain a program whereby ((TTs, signal devices, and amplifying accessories capable of serving the needs of the hearing and speech impaired shall be provided under the standards established in subsection (10) of this section to)) an individual of school age or older((:~~

~~— (a) Who is certified as hearing impaired by a licensed physician, audiologist, or a qualified state agency, and to any subscriber that is an organization representing the hearing impaired, as determined and specified by the TRS program advisory committee; or~~

~~— (b) Who is certified as speech impaired by a licensed physician, speech pathologist, or a qualified state agency, and to any subscriber that is an organization representing the speech impaired, as determined and specified by the TRS program advisory committee.~~

~~— For the purpose of this section, certification implies that individuals cannot use the telephone for expressive or receptive communications due to hearing or speech impairment.~~

~~— (2) The office shall award contracts on a competitive basis, to qualified persons for which eligibility to contract is determined by the office, for the distribution and maintenance of such TTs, signal devices, and amplifying accessories as shall be determined by the office. When awarding such contracts, the office may consider the quality of equipment and, with the director's approval, may award contracts on a basis other than cost. Such contracts may include a provision for the employment and use of a qualified trainer and the training of recipients in the use of such devices.~~

~~— (3) The office shall establish and implement a policy for the ultimate responsibility for recovery of TTs, signal devices, and amplifying accessories from recipients who have been provided with the equipment without cost and who are moving from this state or who for other reasons are no longer using them.~~

~~— (4) Pursuant to recommendations of the TRS program advisory committee, until July 26, 1993, the office shall maintain a program whereby a relay system will be provided state-wide using operator intervention to connect hearing impaired and speech impaired persons and offices or organizations representing the hearing impaired and speech impaired, as determined and specified by the TDD advisory committee pursuant to RCW 43.20A.730. The relay system shall be the most cost-effective possible and shall operate in a manner consistent with federal requirements for such systems.~~

~~(5) Pursuant to the recommendations of the TDD task force report of December 1991, and with the express purpose of maintaining state control and jurisdiction, the office shall seek certification by the federal communications commission of the state-wide relay service.~~

~~(6) The office shall award contracts for the operation and maintenance of the state-wide relay service. The initial contract shall be for service commencing on or before July 26, 1993.) who possesses a hearing or speech impairment is provided with telecommunications equipment, software, and/or peripheral devices, digital or otherwise, that is determined by the office to be necessary for such a person to access and use telecommunications transmission services effectively,~~

(2) The department, through the sole authority of the office or its successor organization, shall maintain a program where telecommunications relay services of a human or electronic nature will be provided to connect hearing impaired, deaf-blind, or speech impaired persons with persons who do not have a hearing or speech impairment. Such telecommunications relay services shall provide the ability for an individual who has a hearing or speech impairment to engage in voice, tactile, or visual communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech impairment to communicate using voice or visual communication services by wire or radio subject to subsection (4)(b) of this section.

(3) The telecommunications relay service and equipment distribution program may operate in such a manner as to provide communications transmission opportunities that are capable of incorporating new technologies that have demonstrated benefits consistent with the intent of this chapter and are in the best interests of the citizens of this state.

(4) The office shall administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services according to this section. The relay service contract shall be awarded to an individual company registered as a telecommunications company by the utilities and transportation commission, to a group of registered telecommunications companies, or to any other company or organization determined by the office as qualified to provide relay services, contingent upon that company or organization being approved as a registered telecommunications company prior to final contract approval. The relay system providers and telecommunications equipment vendors shall be selected on the basis of cost-effectiveness and utility to the greatest extent possible under the program and technical specifications established by the office.

(a) To the extent funds are available under the then-current rate and not otherwise held in reserve or required for other purposes authorized by this chapter, the office may award contracts for communications and related services and equipment for hearing impaired or speech impaired individuals accessing or receiving services provided by, or contracted for, the department to meet access

obligations under Title 2 of the federal Americans with disabilities act or related federal regulations.

(b) The office shall perform its duties under this section with the goal of achieving functional equivalency of access to and use of telecommunications services similar to the enjoyment of access to and use of such services experienced by an individual who does not have a hearing or speech impairment only to the extent that funds are available under the then-current rate and not otherwise held in reserve or required for other purposes authorized by this chapter.

~~((7))~~ (5) The program shall be funded by a telecommunications relay service (TRS) excise tax applied to each switched access line provided by the local exchange companies. The office shall determine, in consultation with the ~~((FRS))~~ office's program advisory committee, the budget needed to fund the program on an annual basis, including both operational costs and a reasonable amount for capital improvements such as equipment upgrade and replacement. The budget proposed by the office, together with documentation and supporting materials, shall be submitted to the office of financial management for review and approval. The approved budget shall be given by the department in an annual budget to the utilities and transportation commission no later than March 1 prior to the beginning of the fiscal year. The utilities and transportation commission shall then determine the amount of ~~((FRS))~~ telecommunications relay service excise tax to be placed on each access line and shall inform each local exchange company of this amount no later than May 15. The utilities and transportation commission shall determine the amount of ~~((FRS))~~ telecommunications relay service excise tax by dividing the total of the program budget, as submitted by the office, by the total number of access lines, and shall not exercise any further oversight of the program under this subsection. The ~~((FRS))~~ telecommunications relay service excise tax shall not exceed nineteen cents per month per access line. Each local exchange company shall impose the amount of excise tax determined by the commission as of July 1, and shall remit the amount collected directly to the department on a monthly basis. The ~~((FRS))~~ telecommunications relay service excise tax shall be separately identified on each ratepayer's bill with the following statement: "Funds federal ADA requirement." All proceeds from the ~~((FRS))~~ telecommunications relay service excise tax shall be put into a fund to be administered by the office through the department.

~~((8))~~ The office shall administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services in accordance with the provisions of RCW 43.20A.725:

~~(9)~~ The program shall be) (6) The telecommunications relay service program and equipment vendors shall provide services and equipment consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the ~~((deaf or))~~ hearing impaired or speech impaired. The department and the utilities and transportation commission shall be

responsible for ensuring compliance with federal requirements and shall provide timely notice to the legislature of any legislation that may be required to accomplish compliance.

~~((10)(a) The department shall provide TTs, signal devices, and amplifying accessories to a person eligible under subsection (1) of this section at no charge in addition to the basic exchange rate if:~~

~~—(i) The person is eligible for participation in the Washington telephone assistance program under RCW 80.36.470;~~

~~—(ii) The person's annual family income is equal to or less than one hundred sixty-five percent of the federal poverty level; or~~

~~—(iii) The person is a child eighteen years of age or younger with a family income less than or equal to two hundred percent of the federal poverty level.~~

~~—(b) A person eligible under subsection (1) of this section with a family income greater than one hundred sixty-five percent and less than or equal to two hundred percent of the federal poverty level shall be assessed a charge for the cost of TTs, signal devices, and amplifying accessories based on a sliding scale of charges established by rule adopted by the department.~~

~~—(c) The department shall charge a person eligible under subsection (1) of this section whose income exceeds two hundred percent of the federal poverty level the cost to the department of purchasing the equipment provided to that person.~~

~~—(d) The department may waive part or all of the charges assessed under this subsection if the department finds that (i) the eligible person requires telebraille equipment or other equipment of similar cost and (ii) the charges normally assessed for the equipment under this subsection would create an exceptional or undue hardship on the eligible person.~~

~~—(e) For the purposes of this subsection, certification of family income by the eligible person or the person's guardian or head of household is sufficient to determine eligibility.)~~

(7) The department shall adopt rules establishing eligibility criteria, ownership obligations, financial contributions, and a program for distribution to individuals requesting and receiving such telecommunications devices distributed by the office, and other rules necessary to administer programs and services consistent with this chapter.

Passed the House March 12, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 211

[House Bill 1369]

ELECTRICIANS AND ELECTRICAL INSTALLATIONS—TECHNICAL CORRECTIONS

AN ACT Relating to making technical corrections concerning electricians and electrical installations under the authority of RCW 1.08.025; and amending RCW 19.28.006, 19.28.010,

19.28.041, 19.28.051, 19.28.071, 19.28.091, 19.28.121, 19.28.131, 19.28.141, 19.28.151, 19.28.171, 19.28.181, 19.28.201, 19.28.211, 19.28.221, 19.28.231, 19.28.241, 19.28.251, 19.28.261, 19.28.271, and 19.28.321.

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

Sec. 1. RCW 19.28.006 and 2000 c 238 s 103 are each amended to read as follows:

The definitions in this section apply throughout this subchapter.

(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Board" means the electrical board under RCW (~~(19.28.065)~~) 19.28.311.

(3) "Chapter" or "subchapter" means the subchapter, if no chapter number is referenced.

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department or the director's designee.

(6) "Electrical construction trade" includes but is not limited to installing or maintaining electrical wires and equipment that are used for light, heat, or power and installing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(7) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(8) "Equipment" means any equipment or apparatus that directly uses, conducts, or is operated by electricity but does not mean plug-in household appliances.

(9) "Industrial control panel" means a factory-wired or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices. The panel may include disconnect means and motor branch circuit protective devices.

(10) "Journeyman electrician" means a person who has been issued a journeyman electrician certificate of competency by the department.

(11) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department.

EXPLANATORY NOTE

RCW 19.28.065 was recodified as RCW 19.28.311 pursuant to 2000 c 238 s 2.

Sec. 2. RCW 19.28.010 and 1993 c 275 s 2 are each amended to read as follows:

(1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures, except for telephone, telegraph, radio, and television wires and equipment, and television antenna installations, signal strength amplifiers, and coaxial installations pertaining thereto shall be in strict conformity

with this chapter, the statutes of the state of Washington, and the rules issued by the department, and shall be in conformity with approved methods of construction for safety to life and property. All wires and equipment that fall within section 90.2(b)(5) of the National Electrical Code, 1981 edition, are exempt from the requirements of this chapter. The regulations and articles in the National Electrical Code, the national electrical safety code, and other installation and safety regulations approved by the national fire protection association, as modified or supplemented by rules issued by the department in furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of the approved methods of construction. All materials, devices, appliances, and equipment used in such installations shall be of a type that conforms to applicable standards or be indicated as acceptable by the established standards of any electrical product testing laboratory which is accredited by the department. Industrial control panels, utilization equipment, and their components do not need to be listed, labeled, or otherwise indicated as acceptable by an accredited electrical product testing laboratory unless specifically required by the National Electrical Code, 1993 edition.

(2) Residential buildings or structures moved into or within a county, city, or town are not required to comply with all of the requirements of this chapter, if the original occupancy classification of the building or structure is not changed as a result of the move. This subsection shall not apply to residential buildings or structures that are substantially remodeled or rehabilitated.

(3) This chapter shall not limit the authority or power of any city or town to enact and enforce under authority given by law, any ordinance, rule, or regulation requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. A city or town shall require that its electrical inspectors meet the qualifications provided for state electrical inspectors in accordance with RCW ~~((19.28.070))~~ 19.28.321. In a city or town having an equal, higher, or better standard the installations, materials, devices, appliances, and equipment shall be in accordance with the ordinance, rule, or regulation of the city or town. Electrical equipment associated with spas, hot tubs, swimming pools, and hydromassage bathtubs shall not be offered for sale or exchange unless the electrical equipment is certified as being in compliance with the applicable product safety standard by bearing the certification mark of an approved electrical products testing laboratory.

(4) Nothing in this chapter may be construed as permitting the connection of any conductor of any electric circuit with a pipe that is connected with or designed to be connected with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of the waterworks piping system.

EXPLANATORY NOTE

RCW 19.28.070 was recodified as RCW 19.28.321 pursuant to 2000 c 238 s 2.

Sec. 3. RCW 19.28.041 and 1998 c 279 s 4 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractors license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d) of this subsection if the applicant will not employ employees in Washington, and by (e) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, domestic appliances, pump and irrigation, limited energy system, signs, nonresidential maintenance, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or

maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for a contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3). In lieu of the surety bond required by this section the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license the applicant must designate an individual who currently possesses an administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made. Administrator certificate specialties include but are not limited to: Residential, domestic, appliance, pump and irrigation, limited energy system, signs, nonresidential maintenance, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW (~~(19.28.123)~~) 19.28.051 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

EXPLANATORY NOTE

RCW 19.28.123 was recodified as RCW 19.28.051 pursuant to 2000 c 238 s 102.

Sec. 4. RCW 19.28.051 and 1996 c 147 s 6 are each amended to read as follows:

It shall be the purpose and function of the board to establish, in addition to a general electrical contractors' license, such classifications of specialty electrical contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in this chapter. In addition, it shall be the purpose and function of the board to establish and administer written examinations for general electrical administrators' certificates and the various specialty electrical administrators' certificates. Examinations shall be designed to reasonably insure that general and specialty electrical administrators' certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to assure proper safety and protection for the general public: (1) Safety, (2) state electrical code, and (3) electrical theory. The department with the consent

of the board shall be permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations. The fee for the examination may be set by the department in its contract with the professional testing agency. The department may direct that the applicant pay the fee to the professional testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination. It shall be the further purpose and function of this board to advise the director as to the need of additional electrical inspectors and compliance officers to be utilized by the director on either a full-time or part-time employment basis and to carry out the duties enumerated in RCW ((~~19.28.510 through 19.28.620~~) 19.28.161 through 19.28.271) as well as generally advise the department on all matters relative to RCW ((~~19.28.510 through 19.28.620~~) 19.28.161 through 19.28.271).

EXPLANATORY NOTE

RCW 19.28.510 through 19.28.620 were recodified as RCW 19.28.161 through 19.28.271 pursuant to 2000 c 238 s 102.

Sec. 5. RCW 19.28.071 and 1986 c 156 s 8 are each amended to read as follows:

Any person, firm, or corporation sustaining any damage or injury by reason of the principal's breach of the conditions of the bond required under RCW ((~~19.28.120~~) 19.28.041) may bring an action against the surety named therein, joining in the action the principal named in the bond; the action shall be brought in the superior court of any county in which the principal on the bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; the action shall be maintained and prosecuted as other civil actions. Claims or actions against the surety on the bond shall be paid in full in the following order of priority: (1) Labor, including employee benefits, (2) materials and equipment used upon such work, (3) taxes and contributions due to the state, (4) damages sustained by any person, firm or corporation due to the failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or regulation applicable thereto: PROVIDED, That the total liability of the surety on any bond shall not exceed the sum of four thousand dollars and the surety on the bond shall not be liable for monetary penalties; and any action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred. The surety shall mail a conformed copy of the judgment against the bond to the department within seven days.

In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against such depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay said judgment from such deposit.

EXPLANATORY NOTE

RCW 19.28.120 was recodified as RCW 19.28.041 pursuant to 2000 c 238 s 102.

Sec. 6. RCW 19.28.091 and 1998 c 98 s 1 are each amended to read as follows:

(1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW (~~19.28.120~~) 19.28.041 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010.

(6) The department may by rule exempt from licensing requirements under this chapter work performed on premanufactured electric power generation equipment assemblies and control gear involving the testing, repair, modification, maintenance, or installation of components internal to the power generation equipment, the control gear, or the transfer switch.

EXPLANATORY NOTE

RCW 19.28.120 was recodified as RCW 19.28.041 pursuant to 2000 c 238 s 102.

Sec. 7. RCW 19.28.121 and 1988 c 81 s 9 are each amended to read as follows:

Any person, firm, partnership, corporation, or other entity desiring a decision of the board pursuant to RCW ((19.28.260)) 19.28.111 shall, in writing, notify the director of such desire and shall accompany the notice with a certified check payable to the department in the sum of two hundred dollars. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired. If the board determines that the contention of the applicant for a decision was proper, the two hundred dollars shall be returned to the applicant; otherwise it shall be used in paying the expenses and per diem of the members of the board in connection with the matter. Any portion of the two hundred dollars not used in paying the per diem and expenses of the board in the case shall be paid into the electrical license fund.

EXPLANATORY NOTE

RCW 19.28.260 was recodified as RCW 19.28.111 pursuant to 2000 c 238 s 102.

Sec. 8. RCW 19.28.131 and 1996 c 147 s 7 are each amended to read as follows:

Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through ((19.28.360)) 19.28.141 and 19.28.311 through 19.28.361 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through ((19.28.360)) 19.28.141 and 19.28.311 through 19.28.361. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through ((19.28.360)) 19.28.141 and 19.28.311 through 19.28.361 of the amount of the penalty and of the specific violation by certified mail, return receipt requested, sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any

balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

EXPLANATORY NOTE

Chapter 19.28 RCW was substantially recodified by 2000 c 238. The updated string citations accurately reflect the sections previously cited.

Sec. 9. RCW 19.28.141 and 1986 c 156 s 12 are each amended to read as follows:

The provisions of RCW (~~(19.28.210)~~) 19.28.101 shall not apply:

(1) Within the corporate limits of any incorporated city or town which has heretofore adopted and enforced or subsequently adopts and enforces an ordinance requiring an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter.

(2) Within the service area of an electricity supply agency owned and operated by a city or town which is supplying electricity and enforcing a standard of construction and materials outside its corporate limits at the time this act takes effect: **PROVIDED**, That such city, town or agency shall henceforth enforce by inspection within its service area outside its corporate limits the same standards of construction and of materials, devices, appliances and equipment as is enforced by the department of labor and industries under the authority of this chapter: **PROVIDED FURTHER**, That fees charged henceforth in connection with such enforcement shall not exceed those established in RCW (~~(19.28.210)~~) 19.28.101.

(3) Within the rights of way of state highways, provided the state department of transportation maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by RCW 19.28.010 through (~~(19.28.360)~~) 19.28.141 and 19.28.311 through 19.28.361.

EXPLANATORY NOTES

(1) RCW 19.28.210 was recodified as RCW 19.28.101 pursuant to 2000 c 238 s 102.

(2) Chapter 19.28 RCW was substantially recodified by 2000 c 238. The updated string citations accurately reflect the sections previously cited.

Sec. 10. RCW 19.28.151 and 2000 c 171 s 47 are each amended to read as follows:

The provisions of RCW 19.28.010 through (~~(19.28.360)~~) 19.28.141 and 19.28.311 through 19.28.361 shall not apply to the work of installing, maintaining or repairing any and all electrical wires, apparatus, installations or equipment used or to be used by a telegraph company or a telephone company in the exercise of its

functions and located outdoors or in a building or buildings used exclusively for that purpose.

EXPLANATORY NOTE

Chapter 19.28 RCW was substantially recodified by 2000 c 238. The updated string citations accurately reflect the sections previously cited.

Sec. 11. RCW 19.28.171 and 1996 c 241 s 2 are each amended to read as follows:

The department may audit the records of an electrical contractor that has verified the hours of experience submitted by an electrical trainee to the department under RCW (~~(19.28.510(2))~~) 19.28.161(2) in the following circumstances: Excessive hours were reported; hours reported outside the normal course of the contractor's business; the type of hours reported do not reasonably match the type of permits purchased; or for other similar circumstances in which the department demonstrates a likelihood of excessive hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from an electrical contractor under the provisions of this section is confidential and is not open to public inspection under chapter 42.17 RCW.

EXPLANATORY NOTE

RCW 19.28.510 was recodified as RCW 19.28.161 pursuant to 2000 c 238 s 102.

Sec. 12. RCW 19.28.181 and 1997 c 309 s 2 are each amended to read as follows:

Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has met the qualifications required under RCW (~~(19.28.530)~~) 19.28.191. An electrician from another jurisdiction applying for a certificate of competency must provide evidence in a form prescribed by the department affirming that the person has the equivalent qualifications to those required under RCW (~~(19.28.530)~~) 19.28.191.

EXPLANATORY NOTE

RCW 19.28.530 was recodified as RCW 19.28.191 pursuant to 2000 c 238 s 102.

Sec. 13. RCW 19.28.201 and 1996 c 147 s 8 are each amended to read as follows:

The department, in coordination with the board, shall prepare an examination to be administered to applicants for journeyman and specialty certificates of competency. The examination shall be constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the status of journeyman electrician or specialty electrician; and

(2) Whether the applicant is sufficiently familiar with the applicable electrical codes and the rules of the department pertaining to electrical installations and electricians.

The department shall, at least four times annually, administer the examination to persons eligible to take it under RCW ~~((19.28.530))~~ 19.28.191. A person may take the journeyman or specialty test as many times as necessary without limit. All applicants shall, before taking the examination, pay the required examination fee to the agency administering the examination. The fee shall cover but not exceed the costs of preparing and administering the examination.

The department shall certify the results of the examination upon such terms and after such a period of time as the department, in cooperation with the board, deems necessary and proper.

(3) The department upon the consent of the board may enter into a contract with a professional testing agency to develop, administer, and score journeyman and/or specialty electrician certification examinations. The department may set the examination fee by contract with the professional testing agency.

EXPLANATORY NOTE

RCW 19.28.530 was recodified as RCW 19.28.191 pursuant to 2000 c 238 s 102.

Sec. 14. RCW 19.28.211 and 1996 c 241 s 7 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW ~~((19.28.540))~~ 19.28.201, and who have complied with RCW ~~((19.28.510 through 19.28.620))~~ 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance

and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a journeyman electrician or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work.

EXPLANATORY NOTES

(1) RCW 19.28.540 was recodified as RCW 19.28.201 pursuant to 2000 c 238 s 102.

(2) RCW 19.28.510 through 19.28.620 were recodified as RCW 19.28.161 through 19.28.271 pursuant to 2000 c 238 s 102.

Sec. 15. RCW 19.28.221 and 1980 c 30 s 7 are each amended to read as follows:

No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade as a journeyman electrician in the state of Washington. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW (~~(+9.28.520)~~) 19.28.181 and paying the fee required under RCW (~~(+9.28.540)~~) 19.28.201: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW (~~(+9.28.520)~~) 19.28.181.

EXPLANATORY NOTES

(1) RCW 19.28.520 was recodified as RCW 19.28.181 pursuant to 2000 c 238 s 102.

(2) RCW 19.28.540 was recodified as RCW 19.28.201 pursuant to 2000 c 238 s 102.

Sec. 16. RCW 19.28.231 and 1986 c 156 s 15 are each amended to read as follows:

The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW (~~(+9.28.520)~~) 19.28.181 and the date the results of taking the examination provided for in RCW (~~(+9.28.540)~~) 19.28.201 are furnished to the applicant. The department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journeyman and speciality electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journeyman electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journeyman electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW (~~(+9.28.520)~~) 19.28.181.

(3) To any apprentice electrician.

EXPLANATORY NOTES

(1) RCW 19.28.520 was recodified as RCW 19.28.181 pursuant to 2000 c 238 s 102.

(2) RCW 19.28.540 was recodified as RCW 19.28.201 pursuant to 2000 c 238 s 102.

Sec. 17. RCW 19.28.241 and 1997 c 58 s 845 are each amended to read as follows:

(1) The department may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder thereof is judged to be incompetent to work in the electrical construction trade as a journeyman electrician or specialty electrician;

(c) The holder thereof has violated any of the provisions of RCW (~~(+9.28.510 through +9.28.620)~~) 19.28.161 through 19.28.271 or any rule adopted under this chapter.

(2) Before any certificate of competency shall be revoked, the holder shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing before the board. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision.

(3) The department 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 department's receipt of a release

issued by the department of social and health services stating that the licensee is in compliance with the order.

EXPLANATORY NOTES

(1) RCW 19.28.510 through 19.28.620 were recodified as RCW 19.28.161 through 19.28.271 pursuant to 2000 c 238 s 102.

(2) 1997 c 58 s 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed.

Sec. 18. RCW 19.28.251 and 1983 c 206 s 20 are each amended to read as follows:

The director may promulgate rules, make specific decisions, orders, and rulings, including demands and findings, and take other necessary action for the implementation and enforcement of RCW ~~((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271~~. In the administration of RCW ~~((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271~~ the department shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry.

EXPLANATORY NOTE

RCW 19.28.510 through 19.28.620 were recodified as RCW 19.28.161 through 19.28.271 pursuant to 2000 c 238 s 102.

Sec. 19. RCW 19.28.261 and 1998 c 98 s 2 are each amended to read as follows:

Nothing in RCW ~~((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271~~ shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units. Nothing in RCW ~~((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271~~ shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of

competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade. RCW ((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees. Nothing in RCW ((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems. The licensing provisions of RCW ((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271 shall not apply to:

(1) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(2) Employees of an employer while the employer is performing utility type work of the nature described in RCW ((19.28.200)) 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work; or

(3) Any work exempted under RCW ((19.28.200(6))) 19.28.091(6).

Nothing in RCW ((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations. Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter.

EXPLANATORY NOTES

(1) RCW 19.28.510 through 19.28.620 were recodified as RCW 19.28.161 through 19.28.271 pursuant to 2000 c 238 s 102.

(2) RCW 19.28.200 was recodified as RCW 19.28.091 pursuant to 2000 c 238 s 102.

Sec. 20. RCW 19.28.271 and 1996 c 147 s 9 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW ((19.28.510 through 19.28.620)) 19.28.161 through 19.28.271 who has not been issued a certificate of competency or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency or a training certificate under RCW ((19.28.510 through 19.28.620)) 19.28.161 through

19.28.271. Any person, firm, partnership, corporation, or other entity found in violation of RCW (~~(+19.28.510 through 19.28.620)~~) 19.28.161 through 19.28.271 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW (~~(+19.28.510 through 19.28.620)~~) 19.28.161 through 19.28.271. An appeal may be made to the board as is provided in RCW (~~(+19.28.350)~~) 19.28.131. The appeal shall be filed within twenty days after the notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW (~~(+19.28.510 through +19.28.620)~~) 19.28.161 through 19.28.271 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW (~~(+19.28.510 through 19.28.620)~~) 19.28.161 through 19.28.271 is a separate violation.

(2) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of RCW (~~(+19.28.510 through 19.28.620)~~) 19.28.161 through 19.28.271 or any rules adopted under RCW (~~(+19.28.510 through 19.28.620)~~) 19.28.161 through 19.28.271 are violated.

EXPLANATORY NOTES

(1) RCW 19.28.510 through 19.28.620 were recodified as RCW 19.28.161 through 19.28.271 pursuant to 2000 c 238 s 102.

(2) RCW 19.28.350 was recodified as RCW 19.28.131 pursuant to 2000 c 238 s 102.

Sec. 21. RCW 19.28.321 and 1997 c 309 s 4 are each amended to read as follows:

The director of labor and industries of the state of Washington and the officials of all incorporated cities and towns where electrical inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall appoint a chief electrical inspector and may appoint other electrical inspectors as the director deems necessary to assist the director in the performance of the director's duties. The chief electrical inspector, subject to the review of the director, shall be responsible for providing the final interpretation of adopted state electrical standards, rules, and policies for the department and its inspectors, assistant inspectors, electrical plan examiners, and other individuals supervising electrical program personnel. If a dispute arises within the department regarding the interpretation of adopted state electrical standards, rules, or policies, the chief electrical inspector, subject to the review of the director, shall provide the final interpretation of the disputed standard, rule, or policy. All electrical inspectors appointed by the director of labor and industries shall have not less than:

Four years experience as journeyman electricians in the electrical construction trade installing and maintaining electrical wiring and equipment, or two years electrical training in a college of electrical engineering of recognized standing and four years continuous practical electrical experience in installation work, or four years of electrical training in a college of electrical engineering of recognized standing and two years continuous practical electrical experience in electrical installation work; or four years experience as a journeyman electrician performing the duties of an electrical inspector employed by the department or a city or town with an approved inspection program under RCW ((19.28.360)) 19.28.141, except that for work performed in accordance with the national electrical safety code and covered by this chapter, such inspections may be performed by a person certified as an outside journeyman lineman, under RCW ((19.28.610(2))) 19.28.261(2), with four years experience or a person with four years experience as a certified outside journeyman lineman performing the duties of an electrical inspector employed by an electrical utility. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. As a condition of employment, inspectors hired exclusively to perform inspections in accordance with the national electrical safety code must possess and maintain certification as an outside journeyman lineman. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries.

EXPLANATORY NOTES

(1) RCW 19.28.360 was recodified as RCW 19.28.141 pursuant to 2000 c 238 s 102.

(2) RCW 19.28.610 was recodified as RCW 19.28.261 pursuant to 2000 c 238 s 102.

Passed the House March 1, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.

CHAPTER 212

[Engrossed Substitute House Bill 1418] COMMUNITY REVITALIZATION FINANCING

AN ACT Relating to community revitalization financing; amending RCW 36.33.220, 36.79.140, 36.82.040, and 46.68.124; adding a new section to chapter 27.12 RCW; adding a new section to chapter 35.61 RCW; adding a new section to chapter 36.32 RCW; adding a new section to chapter 36.68 RCW; adding a new section to chapter 36.69 RCW; adding a new section to chapter 36.75 RCW; adding a new section to chapter 52.12 RCW; adding a new section to chapter 53.08 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 67.38 RCW; adding a new section to chapter 68.52 RCW; adding a new section to chapter 70.44 RCW; adding a new section

to chapter 86.15 RCW; adding a new section to chapter 84.55 RCW; adding a new chapter to Title 39 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) It is declared to be the public policy of the state of Washington to promote and facilitate the orderly development and economic stability of its communities. Local governments need the ability to raise revenue to finance public improvements that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment and stagnate employment and income growth. The construction of necessary public improvements in accordance with local economic development plans will encourage investment in job-producing private development and expand the public tax base.

(2) It is the purpose of this chapter:

(a) To encourage taxing districts to cooperate in the allocation of future tax revenues that are used to finance public improvements designed to encourage private development in selected areas, in particular in those local governments that are located adjacent to another state or international border;

(b) To assist those local governments that have a competitive disadvantage in its ability to attract business, private investment, or commercial development due to its location near a state or international border; and

(c) To prevent or arrest the decay of selected areas due to the inability of existing financial methods to provide needed public improvements, and to encourage private investment designed to promote and facilitate the orderly redevelopment of selected areas.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll.

(2) "Local government" means any city, town, county, port district, or any combination thereof.

(3) "Ordinance" means any appropriate method of taking legislative action by a local government.

(4) "Public improvements" means:

(a) Infrastructure improvements within the increment area that include:

(i) Street and road construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas; and

(vii) Storm water and drainage management systems; and

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within the increment area, including the management and promotion of retail trade activities in the increment area;

(ii) Providing maintenance and security for common or public areas in the increment area; or

(iii) Historic preservation activities authorized under RCW 35.21.395.

(5) "Public improvement costs" means the costs of: (a) Design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and (f) administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of community revitalization financing to fund the costs of the public improvements.

(6) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; and (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065. Regular property taxes do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(7) "Tax allocation base value" means the true and fair value of real property located within an increment area for taxes imposed in the year in which the increment area is created, plus twenty-five percent of any increase in the true and fair value of real property located within an increment area that is placed on the assessment rolls after the increment area is created.

(8) "Tax allocation revenues" means those tax revenues derived from the imposition of regular property taxes on the increment value and distributed to finance public improvements.

(9) "Increment area" means the geographic area from which taxes are to be appropriated to finance public improvements authorized under this chapter.

(10) "Increment value" means seventy-five percent of any increase in the true and fair value of real property in an increment area that is placed on the tax rolls after the increment area is created.

(11) "Taxing districts" means a governmental entity that levies or has levied for its regular property taxes upon real property located within a proposed or approved increment area.

(12) "Value of taxable property" means the value of the taxable property as defined in RCW 39.36.015.

NEW SECTION. Sec. 3. A local government may finance public improvements using community revitalization financing subject to the following conditions:

(1) The local government adopts an ordinance designating an increment area within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of community revitalization financing;

(2) The public improvements proposed to be financed in whole or in part using community revitalization financing are expected to encourage private development within the increment area and to increase the fair market value of real property within the increment area;

(3) Private development that is anticipated to occur within the increment area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(4) Taxing districts, in the aggregate, that levy at least seventy-five percent of the regular property tax within which the increment area is located approves the community revitalization financing of the project under section 5(1) of this act; and

(5) In an increment area that includes any portion of a fire protection district as defined in Title 52 RCW, the fire protection district must approve their participation in the community revitalization financing of the project under this act. Approval by the fire protection district shall be considered as part of the required participation by taxing districts under subsection (4) of this section.

NEW SECTION. Sec. 4. Public improvements that are financed with community revitalization financing may be undertaken and coordinated with other programs or efforts undertaken by the local government and other taxing districts and may be funded in part from revenue sources other than community revitalization financing.

NEW SECTION. Sec. 5. Before adopting an ordinance creating the increment area, a local government must:

(1) Obtain written agreement for the use of community revitalization financing to finance all or a portion of the costs of the designated public improvements from taxing districts that, in the aggregate, levy at least seventy-five percent of the regular property tax on property within the increment area. A signed, written agreement from taxing districts that in the aggregate levy at least seventy-five percent of the regular property tax within the increment area, constitutes concurrence by all taxing districts in the increment area in the public improvement

and participation in the public improvement to the extent of providing limited funding under community revitalization financing authorized under this chapter. The agreement must be authorized by the governing body of taxing districts that in the aggregate levy at least seventy-five percent of the regular property tax on property within the increment area;

(2) Hold a public hearing on the proposed financing of the public improvement in whole or in part with community revitalization financing. Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed increment area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed increment area. Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by community revitalization financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed increment area, and estimate the period during which community revitalization financing is contemplated to be used. The public hearing may be held by either the governing body of the local government, or a committee of the governing body that includes at least a majority of the whole governing body; and

(3) Adopt an ordinance establishing the increment area that describes the public improvements, describes the boundaries of the increment area, estimates the cost of the public improvements and the portion of these costs to be financed by community revitalization financing, estimates the time during which regular property taxes are to be apportioned, provides the date when the apportionment of the regular property taxes will commence, and finds that the conditions of section 3 of this act are met.

NEW SECTION. Sec. 6. The local government shall:

(1) Publish notice in a legal newspaper of general circulation within the increment area that describes the public improvement, describes the boundaries of the increment area, and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

(2) Deliver a certified copy of the ordinance to the county treasurer, the county assessor, and the governing body of each taxing district within which the increment area is located.

NEW SECTION. Sec. 7. (1) Commencing in the calendar year following the passage of the ordinance, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the increment area as follows:

(a) Each taxing district shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the tax allocation base value for that community revitalization financing project in the taxing district, or upon the total assessed value of real property in the taxing district, whichever is smaller; and

(b) The local government that created the increment area shall receive an additional portion of the regular property taxes levied by or for each taxing district upon the increment value within the increment area. However, the local government that created the increment area may agree to receive less than the full amount of this portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the taxing districts that imposed regular property taxes, or have regular property taxes imposed for them, in the increment area for collection that year in proportion to their regular tax levy rates for collection that year. The local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by community revitalization financing.

(2) The county assessor shall allocate twenty-five percent of any increased real property value occurring in the increment area to the tax allocation base value and seventy-five percent to the increment value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The apportionment of increases in assessed valuation in an increment area, and the associated distribution to the local government of receipts from regular property taxes that are imposed on the increment value, must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any excess tax allocation revenues and earnings on the tax allocation revenues remaining at the time the apportionment of tax receipts terminates must be returned to the county treasurer and distributed to the taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the increment area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

NEW SECTION. Sec. 8. (1) A local government designating an increment area and authorizing the use of community revitalization financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from tax allocation revenues it receives, subject to the following requirements:

(a) The ordinance adopted by the local government creating the increment area and authorizing the use of community revitalization financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The local government includes this statement of the intent in all notices required by section 5 of this act.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local

government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a local government designating an increment area and authorizing the use of community revitalization financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the increment area.

NEW SECTION. Sec. 9. A direct or collateral attack on a public improvement, public improvement ordinance, or increment area purported to be authorized or created in conformance with applicable legal requirements, including this chapter, may not be commenced more than thirty days after publication of notice as required by section 6 of this act.

NEW SECTION. Sec. 10. This chapter supplements and neither restricts nor limits any powers which the state or any local government might otherwise have under any laws of this state.

NEW SECTION. Sec. 11. A new section is added to chapter 27.12 RCW to read as follows:

In addition to other authority that a rural county library district or intercounty rural library district possesses, a rural county library district or an intercounty rural library district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a rural county library district or intercounty rural library district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 12. A new section is added to chapter 35.61 RCW to read as follows:

In addition to other authority that a metropolitan park district possesses, a metropolitan park district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a metropolitan park district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 13. A new section is added to chapter 36.32 RCW to read as follows:

In addition to other authority that a county possesses, a county may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a county to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 14. A new section is added to chapter 36.68 RCW to read as follows:

In addition to other authority that a park and recreation service area possesses, a park and recreation service area may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a park and recreation service area to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 15. A new section is added to chapter 36.69 RCW to read as follows:

In addition to other authority that a park and recreation district possesses, a park and recreation district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a park and recreation district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 16. A new section is added to chapter 36.75 RCW to read as follows:

In addition to other authority that a road district possesses, a road district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a road district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 17. A new section is added to chapter 52.12 RCW to read as follows:

In addition to other authority that a fire protection district possesses, a fire protection district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a fire protection district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 18. A new section is added to chapter 53.08 RCW to read as follows:

In addition to other authority that a port district possesses, a port district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a port district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 19. A new section is added to chapter 54.16 RCW to read as follows:

In addition to other authority that a public utility district possesses, a public utility district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a public utility district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 20. A new section is added to chapter 67.38 RCW to read as follows:

In addition to other authority that a cultural arts, stadium, and convention center district possesses, a cultural arts, stadium, and convention center district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a cultural arts, stadium, and convention center district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 21. A new section is added to chapter 68.52 RCW to read as follows:

In addition to other authority that a cemetery district possesses, a cemetery district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a cemetery district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 22. A new section is added to chapter 70.44 RCW to read as follows:

In addition to other authority that a public hospital district possesses, a public hospital district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a public hospital district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 23. A new section is added to chapter 86.15 RCW to read as follows:

In addition to other authority that a flood control zone district possesses, a flood control zone district may provide any public improvement as defined under section 2 of this act, but this additional authority is limited to participating in the financing of the public improvements as provided under section 5 of this act.

This section does not limit the authority of a flood control zone district to otherwise participate in the public improvements if that authority exists elsewhere.

NEW SECTION. Sec. 24. A new section is added to chapter 84.55 RCW to read as follows:

Limitations on regular property taxes that are provided in this chapter shall continue in a taxing district whether or not an increment area exists within the taxing district as provided under chapter 39.— RCW (sections 1 through 10 and 29 of this act).

Sec. 25. RCW 36.33.220 and 1973 1st ex.s. c 195 s 142 are each amended to read as follows:

The legislative authority of any county may budget, in accordance with the provisions of chapter 36.40 RCW, and expend any portion of the county road property tax revenues for any service to be provided in the unincorporated area of the county notwithstanding any other provision of law, including chapter 36.82 RCW and RCW 84.52.050 and 84.52.043. County road property tax revenues that are diverted under chapter 39.— RCW (sections 1 through 10 and 29 of this act) may be expended as provided under chapter 39.— RCW (sections 1 through 10 and 29 of this act).

Sec. 26. RCW 36.79.140 and 1997 c 81 s 6 are each amended to read as follows:

At the time the board reviews the six-year program of each county each even-numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 36.79.130, the portion of the rural arterial construction program scheduled to be performed during the biennial period beginning the following July 1st. Subject to the appropriations actually approved by the legislature, the board shall as soon as feasible approve rural arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 36.79.090. Only those counties that during the preceding twelve months have spent all revenues collected for road purposes only for such purposes, including traffic law enforcement, as are allowed to the state by Article II, section 40 of the state Constitution are eligible to receive funds from the rural arterial trust account(~~(—PROVIDED HOWEVER)~~), except that: (1) Counties with a population of less than eight thousand are exempt from this eligibility restriction(~~(—AND PROVIDED FURTHER, That)~~); (2) counties expending revenues collected for road purposes only on other governmental services after authorization from the voters of that county under RCW 84.55.050 are also exempt from this eligibility restriction; and (3) this restriction shall not apply to any moneys diverted from the road district levy under chapter 39.— RCW (sections 1 through 10 and 29 of this act). The board shall authorize rural arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be

placed under contract. At such time the board may reserve rural arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.

The board may, within the constraints of available rural arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting county that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six-year program of the county was developed. The proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 36.79.080.

Sec. 27. RCW 36.82.040 and 1973 1st ex.s. c 195 s 41 are each amended to read as follows:

For the purpose of raising revenue for establishing, laying out, constructing, altering, repairing, improving, and maintaining county roads, bridges, and wharves necessary for vehicle ferriage and for other proper county purposes, the board shall annually at the time of making the levy for general purposes make a uniform tax levy throughout the county, or any road district thereof, of not to exceed two dollars and twenty-five cents per thousand dollars of assessed value of the last assessed valuation of the taxable property in the county, or road district thereof, unless other law of the state requires a lower maximum levy, in which event such lower maximum levy shall control. All funds accruing from such levy shall be credited to and deposited in the county road fund except that revenue diverted under RCW 36.33.220 shall be placed in a separate and identifiable account within the county current expense fund and except that revenue diverted under chapter 39.— RCW (sections 1 through 10 and 29 of this act) shall be expended as provided under chapter 39.— RCW (sections 1 through 10 and 29 of this act).

Sec. 28. RCW 46.68.124 and 1990 c 33 s 586 are each amended to read as follows:

(1) The equivalent population for each county shall be computed as the sum of the population residing in the county's unincorporated area plus twenty-five percent of the population residing in the county's incorporated area. Population figures required for the computations in this subsection shall be certified by the director of the office of financial management on or before July 1st of each odd-numbered year.

(2) The total annual road cost for each county shall be computed as the sum of one twenty-fifth of the total estimated county road replacement cost, plus the total estimated annual maintenance cost. Appropriate costs for bridges and ferries shall be included. The county road administration board shall be responsible for establishing a uniform system of roadway categories for both maintenance and construction and also for establishing a single statewide cost per mile rate for each roadway category. The total annual cost for each county will be based on the established statewide cost per mile and associated mileage for each category. The mileage to be used for these computations shall be as shown in the county road log

as maintained by the county road administration board as of July 1, 1985, and each two years thereafter. Each county shall be responsible for submitting changes, corrections, and deletions as regards the county road log to the county road administration board. Such changes, corrections, and deletions shall be subject to verification and approval by the county road administration board prior to inclusion in the county road log.

(3) The money need factor for each county shall be the county's total annual road cost less the following four amounts:

(a) One-half the sum of the actual county road tax levied upon the valuation of all taxable property within the county road districts pursuant to RCW 36.82.040, including any amount of such tax diverted under chapter 39—RCW (sections 1 through 10 and 29 of this act), for the two calendar years next preceding the year of computation of the allocation amounts as certified by the department of revenue;

(b) One-half the sum of all funds received by the county road fund from the federal forest reserve fund pursuant to RCW 28A.520.010 and 28A.520.020 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(c) One-half the sum of timber excise taxes received by the county road fund pursuant to chapter 84.33 RCW in the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(d) One-half the sum of motor vehicle license fees and motor vehicle and special fuel taxes refunded to the county, pursuant to RCW 46.68.080 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer.

(4) The state treasurer and the department of revenue shall furnish to the county road administration board the information required by subsection (3) of this section on or before July 1st of each odd-numbered year.

(5) The county road administration board, shall compute and provide to the counties the allocation factors of the several counties on or before September 1st of each year based solely upon the sources of information herein before required: PROVIDED, That the allocation factor shall be held to a level not more than five percent above or five percent below the allocation factor in use during the previous calendar year. Upon computation of the actual allocation factors of the several counties, the county road administration board shall provide such factors to the state treasurer to be used in the computation of the counties' fuel tax allocation for the succeeding calendar year. The state treasurer shall adjust the fuel tax allocation of each county on January 1st of every year based solely upon the information provided by the county road administration board.

NEW SECTION. Sec. 29. Sections 1 through 10 of this act expire July 1, 2010.

NEW SECTION. Sec. 30. Sections 1 through 10 and 29 of this act constitute a new chapter in Title 39 RCW.

NEW SECTION. Sec. 31. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 21, 2001.
 Passed the Senate April 9, 2001.
 Approved by the Governor May 7, 2001.
 Filed in Office of Secretary of State May 7, 2001.

CHAPTER 213

[House Bill 1859]

TAXATION—ELECTRIC GENERATING FACILITIES

AN ACT Relating to exempting electric generating facilities using wind, solar energy, landfill gas, or fuel cells from sales and use taxes; amending RCW 82.08.02567 and 82.12.02567; providing an effective date; providing expiration dates; and declaring an emergency.

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

Sec. 1. RCW 82.08.02567 and 1999 c 358 s 4 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of machinery and equipment used directly in generating electricity using fuel cells, wind, sun, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than two hundred ~~((kilowatts))~~ watts of electricity and 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 82.12.02567:

(a) "Landfill gas" means biomass fuel of the type qualified for federal tax credits under 26 U.S.C. Sec. 29 collected from a landfill. "Landfill" means a landfill as defined under RCW 70.95.030;

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using wind, sun, or landfill gas as the principal source of power;

(c) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(d) Machinery and equipment is "used directly" in generating electricity with fuel cells or by wind energy, solar energy, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, or landfill gas,

converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems;

(e) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(3) This section expires June 30, ~~((2005))~~ 2009.

Sec. 2. RCW 82.12.02567 and 1999 c 358 s 10 are each amended to read as follows:

(1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred ~~((kilowatts))~~ watts of electricity using wind, sun, or landfill gas as the principal source of power.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, ~~((2005))~~ 2009.

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, 2001.

Passed the House March 13, 2001.

Passed the Senate April 9, 2001.

Approved by the Governor May 8, 2001.

Filed in Office of Secretary of State May 8, 2001.

CHAPTER 214

[Engrossed House Bill 2247]

ENERGY—SUPPLY AND DEMAND MANAGEMENT

AN ACT Relating to the management of state energy supply and demand; amending RCW 80.50.010, 80.50.060, 80.50.020, 80.50.030, 80.50.040, 80.50.090, 39.35.010, 39.35.030, 39.35.050, 39.35A.020, 39.35C.010, 39.35C.020, 43.19.668, 43.19.669, 43.19.670, 43.19.675, 43.19.680, 19.29A.040, 44.39.010, and 44.39.015; adding new sections to chapter 80.50 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.12 RCW; adding new sections to chapter 82.16 RCW; adding a new section to chapter 82.32 RCW; adding a new section to chapter 39.35A RCW; adding a new section to chapter 39.35C RCW; adding a new section to chapter 19.29A RCW; adding a new section to chapter 82.34 RCW; creating a new section; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 80.50.010 and 1996 c 4 s 1 are each amended to read as follows:

The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal

adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

(5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay.

Sec. 2. RCW 80.50.060 and 1977 ex.s. c 371 s 5 are each amended to read as follows:

(1) The provisions of this chapter shall apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (7) and ~~((17), as now or hereafter amended))~~ (14). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.

(3) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and ~~((17), as now or hereafter amended))~~ (14).

~~((3))~~ (4) Applications for certification of energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

~~((4))~~ (5) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require.

Sec. 3. RCW 80.50.020 and 1995 c 69 s 1 are each amended to read as follows:

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

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter~~((:))~~.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires~~((:))~~.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized~~((:))~~.

(4) "Site" means any proposed or approved location of an energy facility~~((:))~~.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility~~((:))~~.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid: PROVIDED, That common carrier railroads or motor vehicles shall not be included~~((:))~~.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a

distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission(;;).

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies(;;).

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities(;;).

(10) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense(;;).

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030(;;).

(12) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080(;;).

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars(;;).

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of ~~((two))~~ three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of ~~((fifty))~~ one hundred thousand kilowatts or more, including associated facilities. For the purposes of this subsection, "floating thermal power plants" means a thermal power plant that is suspended on the surface of water by means of a barge, vessel, or other floating platform;

(b) Facilities which will have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products(;;).

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW(;;).

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

(17) "Alternative energy resource" means: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

Sec. 4. RCW 80.50.030 and 1996 c 186 s 108 are each amended to read as follows:

(1) There is created and established the energy facility site evaluation council.

(2)(a) The ~~((chairman))~~ chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The ~~((chairman))~~ chair may designate a member of the council to serve as acting ~~((chairman's))~~ chair in the event of the ~~((chairman's))~~ chair's absence. The salary of the chair shall be determined under RCW 43.03.040. The ~~((chairman))~~ chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The ~~((chairman))~~ chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3)(a) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- ~~((a))~~ (i) Department of ecology;
- ~~((b))~~ (ii) Department of fish and wildlife;
- ~~((c))~~ ~~Department of health;~~
- ~~((d))~~ ~~Military department;~~
- ~~((e))~~ (iii) Department of community, trade, and economic development;
- ~~((f))~~ (iv) Utilities and transportation commission; and

~~((g))~~ (v) Department of natural resources(
~~(h) Department of agriculture;~~
~~(i) Department of transportation)).~~

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

(i) Department of agriculture;

(ii) Department of health;

(iii) Military department; and

(iv) Department of transportation.

(c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after the effective date of this section. For applications filed before the effective date of this section, council membership is mandatory for those agencies listed in (b) of this subsection.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.

NEW SECTION. Sec. 5. A new section is added to chapter 80.50 RCW to read as follows:

(1) After the council has received a site application, council staff shall assist applicants in identifying issues presented by the application.

(2) Council staff shall review all information submitted and recommend resolutions to issues in dispute that would allow site approval.

(3) Council staff may make recommendations to the council on conditions that would allow site approval.

Sec. 6. RCW 80.50.040 and 1990 c 12 s 4 are each amended to read as follows:

The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: **PROVIDED**, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: **PROVIDED FURTHER**, That the council ~~((shall))~~ may retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: **PROVIDED**, That

such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: AND PROVIDED FURTHER, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and

(13) To serve as an interagency coordinating body for energy-related issues.

Sec. 7. RCW 80.50.090 and 1989 c 175 s 173 are each amended to read as follows:

(1) The council shall conduct ~~((a))~~ an informational public hearing in the county of the proposed site ~~((within sixty days of))~~ as soon as practicable but not later than sixty days after receipt of an application for site certification: PROVIDED, That the place of such public hearing shall be as close as practical to the proposed site.

(2) Subsequent to the informational public hearing, the council ~~((must))~~ shall conduct a public hearing to determine ~~((at the initial public hearing))~~ whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

NEW SECTION. Sec. 8. A new section is added to chapter 80.50 RCW to read as follows:

The governor shall undertake an evaluation of the operations of the council to assess means to enhance its efficiency. The assessment must include whether the efficiency of the siting process would be improved by conducting the process under the state environmental policy act in a particular sequence relative to the adjudicative proceeding. The results of this assessment may include recommendations for administrative changes, statutory changes, or expanded staffing levels.

NEW SECTION. Sec. 9. A new section is added to chapter 82.04 RCW to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of the effective date of this section. "Direct service industrial customer" includes a person who is a subsidiary that is

more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on the effective date of this section and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, a credit is allowed against the tax due under this chapter to a direct service industrial customer who purchases natural or manufactured gas from a gas distribution business subject to the public utility tax under chapter 82.16 RCW. The credit is equal to the value of natural or manufactured gas purchased from a gas distribution business and used to generate electricity at the facility multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. This credit may be used each reporting period for sixty months following the first month natural or manufactured gas was purchased from a gas distribution business by a direct service industrial customer who constructs a facility.

(3) Application for credit shall be made by the direct service industrial consumer before the first purchase of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first purchase of natural or manufactured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4) Credit under this section is limited to the amount of tax imposed under this chapter. Refunds shall not be given in place of credits and credits may not be carried over to subsequent calendar years.

(5) All or part of the credit shall be disallowed and must be paid if the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of purchase of natural or manufactured gas to generate electricity at a facility is less than the six-year average annual employment stated on the application for credit under this section. The direct service industrial customer will certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first purchase of gas occurs the average annual employment for each of the five prior calendar years. All or part of the credit that shall be

disallowed and must be paid is commensurate with the decrease in the five-year average of average annual employment as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(6)(a) The direct service industrial customer shall begin paying the credit that is disallowed and is to be paid in the sixth calendar year following the calendar year in which the month following the month of first purchase of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the credit that is disallowed for the sixty-month period the credit may be taken, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for credit that is disallowed and must be paid will not be extinguished by insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect eligibility for this credit. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(7) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(8) A person claiming this credit shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility.

NEW SECTION. Sec. 10. A new section is added to chapter 82.12 RCW to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville power administration for direct consumption as of the effective date of this section. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on the effective date of this section and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, the tax levied in RCW 82.12.022 on the first sixty months' use of natural or manufactured gas by a direct service industrial customer that owns a facility shall be deferred. This deferral is limited to the tax on natural or manufactured gas used or consumed to generate electricity at the facility.

(3) Application for deferral shall be made by the direct service industrial customer before the first use of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first use of natural or manufactured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and shall affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4)(a) The direct service industrial customer shall begin paying the deferred tax in the sixth calendar year following the calendar year in which the month of first use of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the tax deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for deferred tax will not be extinguished by insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect deferral eligibility. However, the deferral is available to the successor only if the eligibility conditions of this section are met.

(5)(a) If the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of use of natural or manufactured gas to generate electricity at a facility is equal to or exceeds the six-year average annual employment stated on the application for deferral under this section, the tax deferred need not be paid. The direct service industrial customer shall certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first use of gas occurs the average annual employment for each of the five prior calendar years.

(b) If the five-year average calculated in (a) of this subsection is less than the average annual employment stated on the application for deferral under this section, the tax deferred under this section shall be paid in the amount as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Deferred Tax to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(c) Tax paid under this subsection shall be paid according to the schedule in subsection (4)(a) of this section and under the terms and conditions of subsection (4)(b) and (c) of this section.

(6) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(7) A person claiming this deferral shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility.

NEW SECTION. Sec. 11. A new section is added to chapter 82.16 RCW to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of the effective date of this section. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on the effective date of this section.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, a credit is allowed against the tax due under this chapter on sales of electricity made from a facility to a direct service industrial customer if the contract for sale of electricity to a direct service industrial customer contains the following terms:

(a) Sales of electricity from the facility to the direct service industrial customer will be made for ten consecutive years or more;

(b) The price charged for the electricity will be reduced by an amount equal to the tax credit; and

(c) Disallowance of all or part of the credit under subsection (5) of this section is a breach of contract and the damages to be paid by the direct service industrial customer to the facility are the amount of tax credit disallowed.

(3) The credit is equal to the gross proceeds from the sale of the electricity to a direct service industrial customer multiplied by the rate in effect at the time of the sale for the public utility tax on light and power businesses under RCW 82.16.020. The credit may be used each reporting period for sixty months following the first month electricity is sold from a facility to a direct service industrial customer. Credit under this section is limited to the amount of tax imposed under this chapter. Refunds shall not be given in place of credits and credits may not be carried over to subsequent calendar years.

(4) Application for credit shall be made before the first sale of electricity from a facility to a direct service industrial customer. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, identification of the direct service industrial customer who will receive electricity from the facility, the projected date of the first sale of electricity to a direct service industrial customer, the date construction is projected to begin or did begin, and the average annual employment in the state of the direct service industrial customer who will receive electricity from the facility for the six calendar years immediately preceding the year in which the application is made. A copy of the contract for sale of electricity must be attached to the application. The department shall rule on the application within thirty days of receipt.

(5) All or part of the credit shall be disallowed and must be paid if the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of sale of electricity from a facility to a direct service industrial customer is less than the six-year average annual employment stated on the application for credit under this section. The direct service industrial customer shall certify to the department and to the facility by June 1st of the sixth calendar year following the calendar year in which the month of first sale occurs the average annual employment for each of the five prior calendar years. All or part of the credit that shall be disallowed and must be paid is commensurate with the decrease in the five-year average of average annual employment as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(6)(a) Payments on credit that is disallowed shall begin in the sixth calendar year following the calendar year in which the month following the first month of sale of electricity from a facility to a direct service industrial customer occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the schedule in this subsection.

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the credit that is disallowed for the sixty-month period the credit may be taken, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for credit that is disallowed and must be paid will not be extinguished by insolvency or other failure of the taxpayer. Transfer of ownership of the facility does not affect eligibility for this credit. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(7) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

NEW SECTION. Sec. 12. A new section is added to chapter 82.32 RCW to read as follows:

(1) The total combined credits and deferrals that may be taken under sections 9 through 11 of this act shall not exceed two million five hundred thousand dollars in any fiscal year. Each person is limited to no more than a total of one million five hundred thousand dollars in tax deferred and credit allowed in any fiscal year in which more than one person takes tax credits and claims tax deferral. The department may require reporting of the credits taken and amounts deferred in a manner and form as is necessary to keep a running total of the amounts.

(2) Credits and deferred tax are available on a first come basis. Priority for tax credits and deferrals among approved applicants shall be designated based on the first actual consumption of gas under section 9 or 10 of this act, or on the first actual use of electricity under section 11 of this act, by each approved applicant. The department shall disallow any credits or deferred tax, or portion thereof, that would cause the total amount of credits taken and deferred taxes claimed to exceed the fiscal year cap or to exceed the per person fiscal year cap. If the fiscal cap is reached or exceeded the department shall notify those persons who have approved applications under sections 9 through 11 of this act that no more credits may be taken or tax deferred during the remainder of the fiscal year. In addition, the department shall provide written notice to any person who has taken any tax credits or claimed any deferred tax in excess of the fiscal year cap. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice.

(3) No portion of an application for credit or deferral disallowed under this section may be carried back or carried forward nor may taxes ineligible for credit or deferral due to the fiscal cap having been reached or exceeded be carried forward or carried backward.

NEW SECTION. Sec. 13. A new section is added to chapter 82.16 RCW to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Base credit" means the maximum amount of credit against the tax imposed by this chapter that each light and power business or gas distribution business may take each fiscal year as calculated by the department. The base credit is equal to the proportionate share that the total grants received by each light and power business or gas distribution business in the prior fiscal year bears to the total grants received by all light and power businesses and gas distribution businesses in the prior fiscal year multiplied by two million five hundred thousand dollars.

(b) "Billing discount" means a reduction in the amount charged for providing service to qualifying persons in Washington made by a light and power business

or a gas distribution business. Billing discount does not include grants received by the light and power business or a gas distribution business.

(c) "Grant" means funds provided to a light and power business or gas distribution business by the department of community, trade, and economic development or by a qualifying organization.

(d) "Low-income home energy assistance program" means energy assistance programs for low-income households as defined on December 31, 2000, in the low-income home energy assistance act of 1981 as amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

(e) "Qualifying person" means a Washington resident who applies for assistance and qualifies for a grant regardless of whether that person receives a grant.

(f) "Qualifying contribution" means money given by a light and power business or a gas distribution business to a qualifying organization, exclusive of money received in the prior fiscal year from its customers for the purpose of assisting other customers.

(g) "Qualifying organization" means an entity that has a contractual agreement with the department of community, trade, and economic development to administer in a specified service area low-income home energy assistance funds received from the federal government and such other funds that may be received by the entity.

(2) Subject to the limitations in this section, a light and power business or a gas distribution business may take a credit each fiscal year against the tax imposed under this chapter.

(a)(i) A credit may be taken for qualifying contributions if the dollar amount of qualifying contributions for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of qualifying contributions given in fiscal year 2000.

(ii) If no qualifying contributions were given in fiscal year 2000, a credit shall be allowed for the first fiscal year that qualifying contributions are given. Thereafter, credit shall be allowed if the qualifying contributions given exceed one hundred twenty-five percent of qualifying contributions given in the first fiscal year.

(iii) The amount of credit shall be fifty percent of the dollar amount of qualifying contributions given in the fiscal year in which the tax credit is taken.

(b)(i) A credit may be taken for billing discounts if the dollar amount of billing discounts for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of billing discounts given in fiscal year 2000.

(ii) If no billing discounts were given in fiscal year 2000, a credit shall be allowed in the first fiscal year that billing discounts are given. Thereafter, credit shall be allowed if the dollar amount of billing discounts given exceeds one hundred twenty-five percent of billing discounts given in the first fiscal year.

(iii) The amount of credit shall be fifty percent of the dollar amount of the billing discounts given in the fiscal year in which the tax credit is taken.

(c) The total amount of credit that may be taken for qualifying contributions and billing discounts in a fiscal year is limited to the base credit for the same fiscal year.

(3) The total amount of credit, statewide, that may be taken in any fiscal year shall not exceed two million five hundred thousand dollars. By May 1st of each year starting in 2002, the department of community, trade, and economic development shall notify the department of revenue in writing of the grants received in the current fiscal year by each light and power business and gas distribution business.

(4)(a) Not later than June 1st of each year beginning in 2002, the department shall publish the base credit for each light and power business and gas distribution business for the next fiscal year.

(b) Not later than July 1st of each year beginning in 2002, application for credit must be made to the department including but not limited to the following information: Billing discounts given by the applicant in fiscal year 2000; qualifying contributions given by the applicant in the prior fiscal year; the amount of money received in the prior fiscal year from customers for the purpose of assisting other customers; the base credit for the next fiscal year for the applicant; the qualifying contributions anticipated to be given in the next fiscal year; and billing discounts anticipated to be given in the next fiscal year. No credit under this section will be allowed to a light and power business or gas distribution business that does not file the application by July 1st.

(c) Not later than August 1st of each year beginning in 2002, the department shall notify each applicant of the amount of credit that may be taken in that fiscal year.

(d) The balance of base credits not used by other light and power businesses and gas distribution businesses shall be ratably distributed to applicants under the formula in subsection (1)(a) of this section. The total amount of credit that may be taken by an applicant is the base credit plus any ratable portion of unused base credit.

(5) The credit taken under this section is limited to the amount of tax imposed under this chapter for the fiscal year. The credit must be claimed in the fiscal year in which the billing reduction is made. Any unused credit expires. Refunds shall not be given in place of credits.

(6) No credit may be taken for billing discounts made before July 1, 2001. Within two weeks of the effective date of this section, the department of community, trade, and economic development shall notify the department of revenue in writing of the grants received in fiscal year 2001 by each light and power business and gas distribution business. Within four weeks of the effective date of this section, the department of revenue shall publish the base credit for each light and power business and gas distribution business for fiscal year 2002. Within

eight weeks of the effective date of this section, application to the department must be made showing the information required in subsection (4)(b) of this section. Within twelve weeks of the effective date of this section, the department shall notify each applicant of the amount of credit that may be taken in fiscal year 2002.

NEW SECTION. Sec. 14. (1) The legislature hereby finds that:

(a) The economy of the state and the health, safety, and welfare of its citizens are threatened by the current energy supply and price instabilities;

(b) Many energy efficiency programs for public buildings launched during the 1970s and 1980s were not maintained during the subsequent sustained period of low energy costs and abundant supply; and

(c) Conservation programs originally established in the 1970s and 1980s can be improved or updated. New programs drawing on recently developed technologies, including demand-side energy management systems, can materially increase the efficiency of energy use by the public sector.

(2) It is the policy of the state of Washington that:

(a) State government is committed to achieving significant gains in energy efficiency. Conventional conservation programs will be reviewed and updated in light of experience gained since their commencement;

(b) State government must play a leading role in demonstrating updated and new energy efficiency technologies. New programs or measures made possible by technological advances, such as demand-side response measures and energy management systems, shall be treated in the same manner as conventional conservation programs and will be integrated into the state's energy efficiency programs.

Sec. 15. RCW 39.35.010 and 1982 c 159 s 1 are each amended to read as follows:

The legislature hereby finds:

(1) That major publicly owned or leased facilities have a significant impact on our state's consumption of energy;

(2) That energy conservation practices including energy management systems and renewable energy systems adopted for the design, construction, and utilization of such facilities will have a beneficial effect on our overall supply of energy;

(3) That the cost of the energy consumed by such facilities over the life of the facilities shall be considered in addition to the initial cost of constructing such facilities;

(4) That the cost of energy is significant and major facility designs shall be based on the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of a major facility, of the energy consumed, and of the operation and maintenance of a major facility as they affect energy consumption; and

(5) That the use of energy systems in these facilities which utilize renewable resources such as solar energy, wood or wood waste, or other nonconventional

fuels ~~((should))~~, and which incorporate energy management systems, shall be considered in the design of all publicly owned or leased facilities.

Sec. 16. RCW 39.35.030 and 1996 c 186 s 402 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(2) "Department" means the state department of general administration.

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Energy management system" means a program, energy efficiency equipment, technology, device, or other measure including, but not limited to, a management, educational, or promotional program, smart appliance, meter reading system that provides energy information capability, computer software or hardware, communications equipment or hardware, thermostat or other control equipment, together with related administrative or operational programs, that allows identification and management of opportunities for improvement in the efficiency of energy use, including but not limited to a measure that allows:

(a) Energy consumers to obtain information about their energy usage and the cost of energy in connection with their usage;

(b) Interactive communication between energy consumers and their energy suppliers;

(c) Energy consumers to respond to energy price signals and to manage their purchase and use of energy; or

(d) For other kinds of dynamic, demand-side energy management.

(8) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the department. The department shall update these projections at least every two years.

~~((#8))~~ (9) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

- (b) The amount and type of fenestration employed in a major facility;
- (c) The amount of insulation incorporated into the design of a major facility;
- (d) The variable occupancy and operating conditions of a major facility; and
- (e) An energy-consumption analysis of a major facility.

~~((9))~~ (10) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

~~((10))~~ (11) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems, and one of which shall comply at a minimum with the sustainable design guidelines of the United States green building council leadership in energy and environmental design silver standard or similar design standard as may be adopted by rule by the department;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

~~((11))~~ (12) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

~~((12))~~ (13) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of July 28, 1991, shall apply.

~~((13))~~ (14) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the department.

~~((14))~~ (15) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recom-

mended by the department as providing an efficient energy system or systems based on the economic life of the selected buildings.

Sec. 17. RCW 39.35.050 and 1996 c 186 s 403 are each amended to read as follows:

The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

- (1) Address energy considerations during the planning phase of the project;
- (2) Identify energy components and system alternatives including energy management systems, renewable energy systems, and cogeneration applications prior to commencing the energy consumption analysis;
- (3) Identify simplified methods to assure the lowest life-cycle cost alternatives for selected buildings with between twenty-five thousand and one hundred thousand square feet of usable floor area;
- (4) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;
- (5) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;
- (6) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of chapter 201, Laws of 1991;
- (7) Provide for review and approval of life-cycle cost analysis.

Sec. 18. RCW 39.35A.020 and 1985 c 169 s 2 are each amended to read as follows:

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

(1) "Energy equipment and services" means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance.

(2) "Energy management system" has the definition provided in RCW 39.35.030.

(3) "Municipality" has the definition provided in RCW 39.04.010.

~~((3))~~ (4) "Performance-based contract" means one or more contracts for energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings attributable under the contract to the energy equipment and services; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such

guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy.

NEW SECTION. Sec. 19. A new section is added to chapter 39.35A RCW to read as follows:

The state department of general administration shall maintain a registry of energy service contractors and provide assistance to municipalities in identifying available performance-based contracting services.

Sec. 20. RCW 39.35C.010 and 1996 c 186 s 405 are each amended to read as follows:

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

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Energy" means energy as defined in RCW 43.21F.025(1).

(5) "Energy audit" has the definition provided in RCW 43.19.670.

~~(6)~~ (7) "Energy efficiency project" means a conservation or cogeneration project.

~~((6))~~ (7) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

~~((7))~~ (8) "Department" means the state department of general administration.

~~((8))~~ (9) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

~~((9))~~ (10) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

~~((10))~~ (11) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

~~((11))~~ (12) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

~~((12))~~ (13) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

~~((13))~~ (14) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

~~((14))~~ (15) "Local utility" means the utility or utilities in whose service territory a public facility is located.

Sec. 21. RCW 39.35C.020 and 1996 c 186 s 406 are each amended to read as follows:

(1) Each state agency and school district shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs. Each state agency shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in chapter 43.19 RCW, except that any state agency that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this subsection for those facilities included in the audits and conservation measures. Each school district shall undertake an energy audit and implement cost-effective conservation measures pursuant to the time schedules and requirements set forth in section 22 of this act. Performance-based contracting shall be the preferred method for completing energy audits and implementing cost-effective conservation measures.

(2) The department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The assistance shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The department shall solicit involvement in program planning and implementation from utilities and other energy conservation

suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The department shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The department shall enter into a written agreement with the public agency for the recovery of costs.

NEW SECTION. Sec. 22. A new section is added to chapter 39.35C RCW to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, each school district shall conduct an energy audit of its facilities. This energy audit may be conducted by contract or by other arrangement, including appropriate district staff. Performance-based contracting shall be the preferred method for implementing and completing energy audits.

(a) For each district facility, the energy consumption surveys shall be completed no later than December 31, 2001, and the walk-through surveys shall be completed no later than October 1, 2002. Upon completion of each walk-through survey, the district shall implement energy conservation maintenance and operation procedures that may be identified for any district facility. These procedures shall be implemented as soon as possible, but not later than twelve months after the walk-through survey.

(b) Except as provided in subsection (3) of this section, if a walk-through survey has identified potentially cost-effective energy conservation measures, the district shall undertake an investment grade audit of the facility. Investment grade audits shall be completed no later than June 30, 2003, and installation of cost-effective conservation measures recommended in the investment grade audit shall be completed no later than December 31, 2004.

(2) A school district that, after December 31, 1997, has completed energy audits and implemented cost-effective conservation measures, or has contracted with an energy service company for energy audits and conservation measures, is deemed to have met the requirements of this section for those facilities included in the audits and conservation measures.

(3) A school district that after reasonable efforts and consultation with the department is unable to obtain a contract with an energy service company to conduct an investment grade audit or install cost-effective conservation measures recommended in an investment grade audit, is exempt from the requirements of subsection (1)(b) of this section.

Sec. 23. RCW 43.19.668 and 1993 c 204 s 6 are each amended to read as follows:

The legislature finds and declares that the buildings, facilities, equipment, and vehicles owned or leased by state government consume significant amounts of energy and that energy conservation actions, including energy management

systems, to provide for efficient energy use in these buildings, facilities, equipment, and vehicles will reduce the costs of state government. In order for the operations of state government to provide the citizens of this state an example of energy use efficiency, the legislature further finds and declares that state government should undertake an aggressive program designed to reduce energy use in state buildings, facilities, equipment, and vehicles within a reasonable period of time. The use of appropriate tree plantings for energy conservation is encouraged as part of this program.

Sec. 24. RCW 43.19.669 and 1980 c 172 s 2 are each amended to read as follows:

It is the purpose of RCW 43.19.670 through 43.19.685 to require energy audits in state-owned buildings, to require energy audits as a lease condition in all new, renewed, and renegotiated leases of buildings by the state, to undertake such modifications and installations as are necessary to maximize the efficient use of energy in these buildings, including but not limited to energy management systems, and to establish a policy for the purchase of state vehicles, equipment, and materials which results in efficient energy use by the state.

For a building that is leased by the state, energy audits and implementation of cost-effective energy conservation measures are required only for that portion of the building that is leased by the state when the state leases less than one hundred percent of the building. When implementing cost-effective energy conservation measures in buildings leased by the state, those measures must generate savings sufficient to finance the building modifications and installations over a loan period not greater than ten years and allow repayment during the term of the lease.

Sec. 25. RCW 43.19.670 and 1982 c 48 s 1 are each amended to read as follows:

As used in RCW 43.19.670 through 43.19.685, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Energy audit" means a determination of the energy consumption characteristics of a facility which consists of the following elements:

(a) An energy consumption survey which identifies the type, amount, and rate of energy consumption of the facility and its major energy systems. This survey shall be made by the agency responsible for the facility.

(b) A walk-through survey which determines appropriate energy conservation maintenance and operating procedures and indicates the need, if any, for the acquisition and installation of energy conservation measures and energy management systems. This survey shall be made by the agency responsible for the facility if it has technically qualified personnel available. The director of general administration shall provide technically qualified personnel to the responsible agency if necessary.

(c) (~~A technical assistance study~~) An investment grade audit, which is an intensive engineering analysis of energy conservation and management measures for the facility, net energy savings, and a cost-effectiveness determination. This

element is required only for those facilities designated in the ~~((technical assistance study))~~ schedule adopted under RCW 43.19.680~~((3))~~ (2).

(2) "Cost-effective energy conservation measures" means energy conservation measures that the investment grade audit concludes will generate savings sufficient to finance project loans of not more than ten years.

(3) "Energy conservation measure" means an installation or modification of an installation in a facility which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, including:

- (a) Insulation of the facility structure and systems within the facility;
- (b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications;
- (c) Automatic energy control systems;
- (d) Equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;
- (e) Solar space heating or cooling systems, solar electric generating systems, or any combination thereof;
- (f) Solar water heating systems;
- (g) Furnace or utility plant and distribution system modifications including replacement burners, furnaces, and boilers which substantially increase the energy efficiency of the heating system; devices for modifying flue openings which will increase the energy efficiency of the heating system; electrical or mechanical furnace ignitions systems which replace standing gas pilot lights; and utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources;
- (h) Caulking and weatherstripping;
- (i) Replacement or modification of lighting fixtures which increase the energy efficiency of the lighting system;
- (j) Energy recovery systems; ~~((and))~~
- (k) Energy management systems; and
- (l) Such other measures as the director finds will save a substantial amount of energy.

~~((3))~~ (4) "Energy conservation maintenance and operating procedure" means modification or modifications in the maintenance and operations of a facility, and any installations within the facility, which are designed to reduce energy consumption in the facility and which require no significant expenditure of funds.

~~((4))~~ (5) "Energy management system" has the definition contained in RCW 39.35.030.

(6) "Energy savings performance contracting" means the process authorized by chapter 39.35C RCW by which a company contracts with a state agency to conduct no-cost energy audits, guarantee savings from energy efficiency, provide financing for energy efficiency improvements, install or implement energy efficiency improvements, and agree to be paid for its investment solely from

savings resulting from the energy efficiency improvements installed or implemented.

(7) "Energy service company" means a company or contractor providing energy savings performance contracting services.

(8) "Facility" means a building, a group of buildings served by a central energy distribution system, or components of a central energy distribution system.

~~((5))~~ (9) "Implementation plan" means the annual tasks and budget required to complete all acquisitions and installations necessary to satisfy the recommendations of the energy audit.

Sec. 26. RCW 43.19.675 and 1982 c 48 s 2 are each amended to read as follows:

For each state-owned facility, the director of general administration, ((in cooperation with the director of the state energy office)) or the agency responsible for the facility if other than the department of general administration, shall conduct((, by contract or other arrangement,)) an energy audit ((for each state-owned)) of that facility. ((All energy audits shall be coordinated with and complement other governmental energy audit programs. The energy audit for each state-owned facility located on the capitol campus shall be completed no later than July 1, 1981, and the results and findings of each energy audit shall be compiled and transmitted to the governor and the legislature no later than October 1, 1981.)) This energy audit may be conducted by contract or by other arrangement, including appropriate agency staff. Performance-based contracting shall be the preferred method for implementing and completing energy audits. For ((every other)) each state-owned facility, the energy consumption surveys shall be completed no later than October 1, ((1982)) 2001, and the walk-through surveys shall be completed no later than July 1, ((1983)) 2002.

Sec. 27. RCW 43.19.680 and 1996 c 186 s 506 are each amended to read as follows:

(1) Upon completion of each walk-through survey required by RCW 43.19.675, the director of general administration or the agency responsible for the facility if other than the department of general administration shall implement energy conservation maintenance and operation procedures that may be identified for any state-owned facility. These procedures shall be implemented as soon as possible but not later than twelve months after the walk-through survey.

(2) ((By December 31, 1981, for the capitol campus the director of general administration shall prepare and transmit to the governor and the legislature an implementation plan.)) If a walk-through survey has identified potentially cost-effective energy conservation measures, the agency responsible for the facility shall undertake an investment grade audit of the facility. Investment grade audits shall be completed no later than December 1, 2002. Installation of cost-effective energy conservation measures recommended in the investment grade audit shall be completed no later than June 30, 2004.

(3) ~~((By December 31, 1983, for all other state-owned facilities, the director of general administration shall prepare and transmit to the governor and the legislature the results of the energy consumption and walk-through surveys and a schedule for the conduct of technical assistance studies. This submission shall contain the energy conservation measures planned for installation during the ensuing biennium. Priority considerations for scheduling technical assistance studies shall include but not be limited to a facility's energy efficiency, responsible agency participation, comparative cost and type of fuels, possibility of outside funding, logistical considerations such as possible need to vacate the facility for installation of energy conservation measures, coordination with other planned facility modifications, and the total cost of a facility modification, including other work which would have to be done as a result of installing energy conservation measures. Energy conservation measure acquisitions and installations shall be scheduled to be twenty-five percent complete by June 30, 1985, or at the end of the capital budget biennium which includes that date, whichever is later, fifty-five percent complete by June 30, 1989, or at the end of the capital budget biennium which includes that date, whichever is later, eighty-five percent complete by June 30, 1993, or at the end of the capital budget biennium which includes that date, whichever is later, and fully complete by June 30, 1995, or at the end of the capital budget biennium which includes that date, whichever is later. Each state agency shall implement energy conservation measures with a payback period of twenty-four months or less that have a positive cash flow in the same biennium:))~~

For each biennium until all measures are installed, the director of general administration shall report to the governor and legislature installation progress, measures planned for installation during the ensuing biennium ~~((, and changes, if any, to the technical assistance study schedule))~~. This report shall be submitted by December 31, ~~((1984))~~ 2004, or at the end of the following year whichever immediately precedes the capital budget adoption, and every two years thereafter until all measures are installed.

(4) ~~((The director of general administration shall adopt rules to facilitate private investment in energy conservation measures for state-owned buildings consistent with state law:))~~ Agencies may contract with energy service companies as authorized by chapter 39.35C RCW for energy audits and implementation of cost-effective energy conservation measures. The department shall provide technically qualified personnel to the responsible agency upon request. The department shall recover a fee for this service.

NEW SECTION. Sec. 28. A new section is added to chapter 19.29A RCW to read as follows:

(1) Beginning January 1, 2002, each electric utility must provide to its retail electricity customers a voluntary option to purchase qualified alternative energy resources in accordance with this section.

(2) Each electric utility must include with its retail electric customer's regular billing statements, at least quarterly, a voluntary option to purchase qualified

alternative energy resources. The option may allow customers to purchase qualified alternative energy resources at fixed or variable rates and for fixed or variable periods of time, including but not limited to monthly, quarterly, or annual purchase agreements. A utility may provide qualified alternative energy resource options through either: (a) Resources it owns or contracts for; or (b) the purchase of credits issued by a clearinghouse or other system by which the utility may secure, for trade or other consideration, verifiable evidence that a second party has a qualified alternative energy resource and that the second party agrees to transfer such evidence exclusively to the benefit of the utility.

(3) For the purposes of this section, a "qualified alternative energy resource" means the electricity produced from generation facilities that are fueled by: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; (f) gas produced during the treatment of wastewater; (g) qualified hydropower; or (h) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(4) For the purposes of this section, "qualified hydropower" means the energy produced either: (a) As a result of modernizations or upgrades made after June 1, 1998, to hydropower facilities operating on the effective date of this section that have been demonstrated to reduce the mortality of anadromous fish; or (b) by run of the river or run of the canal hydropower facilities that are not responsible for obstructing the passage of anadromous fish.

(5) The rates, terms, conditions, and customer notification of each utility's option or options offered in accordance with this section must be approved by the governing body of the consumer-owned utility or by the commission for investor-owned utilities. All costs and benefits associated with any option offered by an electric utility under this section must be allocated to the customers who voluntarily choose that option and may not be shifted to any customers who have not chosen such option.

(6) Each consumer-owned utility must report annually to the department and each investor-owned utility must report annually to the commission beginning October 1, 2002, until October 1, 2012, describing the option or options it is offering its customers under the requirements of this section, the rate of customer participation, the amount of qualified alternative energy resources purchased by customers, and the amount of utility investments in qualified alternative energy resources. The department and the commission together shall report annually to the legislature, beginning December 1, 2002, until December 1, 2012, with the results of the utility reports.

Sec. 29. RCW 19.29A.040 and 1998 c 300 s 6 are each amended to read as follows:

The provisions of RCW 19.29A.020, 19.29A.030, ~~((and))~~ section 5, chapter 300, Laws of 1998, and section 28 of this act do not apply to a small utility.

However, nothing in this section prohibits the governing body of a small utility from determining the utility should comply with any or all of the provisions of RCW 19.29A.020, 19.29A.030, ~~((and))~~ section 5, chapter 300, Laws of 1998, and section 28 of this act, which governing bodies are encouraged to do.

Sec. 30. RCW 44.39.010 and 1977 ex.s. c 328 s 13 are each amended to read as follows:

There is hereby created the joint committee on energy ~~((and utilities))~~ supply of the legislature of the state of Washington.

Sec. 31. RCW 44.39.015 and 1977 ex.s. c 328 s 14 are each amended to read as follows:

The committee shall consist of four senators and four representatives who shall be selected biennially as follows:

(1) The president of the senate shall ~~((nominate))~~ appoint four members from the ~~((energy and utilities))~~ senate to serve on the committee, including the ~~((chairman;))~~ chair of the committee responsible for energy issues. Two members ~~((being))~~ from each major political party ~~((, to serve on the committee, and shall submit the list of nominees to the senate for confirmation. Upon confirmation, the senators shall be deemed installed as members))~~ must be appointed.

(2) The speaker or co-speakers of the house of representatives shall ~~((nominate))~~ appoint four members from the ~~((energy and utilities))~~ house of representatives to serve on the committee, including the ~~((chairman;))~~ chair or co-chairs of the committee responsible for energy issues. Two members ~~((being))~~ from each major political party ~~((, to serve on the committee, and shall submit the list of nominees to the house of representatives for confirmation. Upon confirmation, the representatives shall be deemed installed as members. The chairmen of the senate and house energy and utilities committees shall alternately serve as chairman for one year terms. The chairman of the house committee shall serve as the initial chairman. The chairman may designate another committee member to serve as chairman in his or her absence))~~ must be appointed.

(3) The committee shall elect a chair and a vice-chair. The chair shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years. In the case of a tie in the membership of the house of representatives in an even-numbered year, the committee shall elect co-chairs from the house of representatives in that year.

NEW SECTION. **Sec. 32.** A new section is added to chapter 82.34 RCW to read as follows:

(1) The following definitions apply throughout this section:

(a) "Qualifying facility" means an air pollution control facility as that term is defined in RCW 82.34.010(1)(a) to be installed or acquired for a thermal electric peaking plant with a capacity of less than one hundred megawatts and which is approved pursuant to the Washington clean air act, chapter 70.94 RCW.

(b) "Thermal electric peaking plant" means a natural gas-fired thermal electric generating facility operated by a light and power business and placed into service

between January 1, 1978, and December 31, 1984, and that is registered for the calendar year 2000 pursuant to RCW 70.94.151.

(c) "Light and power business" has the same meaning as in RCW 82.16.010.

(2) A light and power business is exempt from sales tax on the installation or acquisition of up to two qualifying facilities after January 1, 2001, as provided in this section. Upon written request of a light and power business to which the approval issued under chapter 70.94 RCW is attached, the department shall make a determination as to whether a plant is a thermal electric peaking plant acquiring or installing a qualifying facility eligible under this section. The department shall consult with the department of community, trade, and economic development and the department of ecology in making the determination. If the determination is in the affirmative, the department shall issue the light and power business a sales and use tax exemption certificate in a form and manner as deemed appropriate by the department.

(3) The charges for installation or acquisition of a qualifying facility by the holder of the certificate are exempt from sales tax imposed under chapter 82.08 RCW and use tax imposed under chapter 82.12 RCW. The purchaser must provide the seller with a copy of the sales and use tax exemption certificate. The seller shall retain a copy of the certificate for the seller's files.

(4) The exemption in this section is limited to the installation or acquisition of a qualifying facility and does not apply to servicing, maintenance, operation, or repairs of a thermal electric peaking plant or of an air pollution control facility.

(5) This section expires June 30, 2003.

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

NEW SECTION. Sec. 34. 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, 2001.

Passed the Senate April 20, 2001.

Approved by the Governor May 8, 2001.

Filed in Office of Secretary of State May 8, 2001.

CHAPTER 215

[Senate Bill 6107]

GEOTHERMAL ENERGY

AN ACT Relating to geothermal energy; amending RCW 43.140.900; and declaring an emergency.

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

Sec. 1. RCW 43.140.900 and 1991 c 76 s 1 are each amended to read as follows:

This chapter shall terminate on June 30, ~~(2001)~~ 2011.

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, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 8, 2001.

Filed in Office of Secretary of State May 8, 2001.

CHAPTER 216

[Substitute House Bill 1384]

GOVERNING BODIES OF PUBLIC AGENCIES—EXECUTIVE SESSIONS

AN ACT Relating to clarifying the circumstances under which the governing body of a public agency may hold an executive session to discuss litigation; amending RCW 42.30.110; and adding a new section to chapter 42.30 RCW.

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

Sec. 1. RCW 42.30.110 and 1989 c 238 s 2 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action

hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(A) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(B) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity;
or

(C) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

NEW SECTION. Sec. 2. A new section is added to chapter 42.30 RCW to read as follows:

The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter.

Passed the House April 16, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 217

[Engrossed Substitute Senate Bill 5449]

IDENTITY THEFT

AN ACT Relating to identity theft; amending RCW 43.43.760, 19.16.250, 19.16.250, 9.35.010, 9.35.020, 9.35.030, 9A.82.010, and 13.40.0357; reenacting and amending RCW 9.94A.320; adding new sections to chapter 9.35 RCW; adding a new section to chapter 19.182 RCW; creating a new section; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.35 RCW to read as follows:

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

(1) "Financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

- (a) Account numbers and balances;
- (b) Transactional information concerning an account; and
- (c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicaid numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) "Financial information repository" means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means a person as defined in RCW 9A.04.110.

(5) "Victim" means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity.

NEW SECTION. Sec. 2. A new section is added to chapter 9.35 RCW to read as follows:

INFORMATION AVAILABLE TO VICTIM. (1) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association possessing information relating to an actual or potential violation of this chapter, and who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person who has used the victim's means of identification, must, upon written request of the victim, provide copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual violation of this chapter. Nothing in this section requires the information provider to disclose information that it is otherwise prohibited from disclosing by law, except that a law that prohibits disclosing a person's information to third parties shall not be used to deny disclosure of such information to the victim under this section.

(2) Unless the information provider is otherwise willing to verify the victim's identification, the victim shall provide the following as proof of positive identification:

(a) The showing of a government-issued photo identification card or, if providing proof by mail, a copy of a government-issued photo identification card;

(b) A copy of a filed police report evidencing the victim's claim; and

(c) A written statement from the state patrol showing that the state patrol has on file documentation of the victim's identity pursuant to the personal identification procedures in RCW 43.43.760.

(3) The provider may require compensation for the reasonable cost of providing the information requested.

(4) No person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may be held liable for an action taken in good faith to provide information regarding potential or actual violations of this chapter to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any persons alleging to be a victim who comply with subsection (2) of this section which evidences the alleged victim's claim for the purpose of identification and prosecution of violators of this chapter, or to assist a victim in recovery of fines, restitution, rehabilitation of the victim's credit, or such other relief as may be appropriate.

(5) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may decline to provide information pursuant to this section when, in the exercise of

good faith and reasonable judgment, it believes this section does not require disclosure of the information.

(6) Nothing in this section creates an obligation on the part of a person, financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association to retain or maintain information or records that they are not otherwise required to retain or maintain in the ordinary course of its business.

(7) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. It 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. The burden of proof in an action alleging a violation of this section shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set forth in RCW 19.182.120. For purposes of a judgment awarded pursuant to an action by a consumer under chapter 19.86 RCW, the consumer shall be awarded actual damages. However, where there has been willful failure to comply with any requirement imposed under this section, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court.

Sec. 3. RCW 43.43.760 and 1985 c 201 s 15 are each amended to read as follows:

(1) Whenever a resident of this state appears before any law enforcement agency and requests an impression of his or her fingerprints to be made, such agency may comply with his or her request and make the required copies of the impressions on forms marked "Personal Identification". The required copies shall be forwarded to the section and marked "for personal identification only".

The section shall accept and file such fingerprints submitted voluntarily by such resident, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or other similar circumstances. Upon the request of such person, the section shall return his or her identification data.

(2) Whenever a person claiming to be a victim of identity theft appears before any law enforcement agency and requests an impression of his or her fingerprints to be made, such agency may comply with this request and make the required copies of the impressions on forms marked "Personal Identification." The required copies shall be forwarded to the section and marked "for personal identification only."

The section shall accept and file such fingerprints submitted by such resident, for the purpose of securing a more certain and easy identification in cases of identity theft. The section shall provide a statement showing that the victim's impression of fingerprints has been accepted and filed with the section.

The statement provided to the victim shall state clearly in twelve-point print:

"The person holding this statement has claimed to be a victim of identity theft. Pursuant to chapter 9.35 RCW, a business is required by law to provide this victim with copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual identity theft. A business must provide this information once the victim makes a request in writing, shows this statement, any government issued photo identification card, and a copy of a police report."

Upon the request of such person, the section shall return his or her identification data.

(3) Whenever any person is an applicant for appointment to any position or is an applicant for employment or is an applicant for a license to be issued by any governmental agency, and the law or a regulation of such governmental agency requires that the applicant be of good moral character or not have been convicted of a crime, or is an applicant for appointment to or employment with a criminal justice agency, or the department, the applicant may request any law enforcement agency to make an impression of his or her fingerprints to be submitted to the section. The law enforcement agency may comply with such request and make copies of the impressions on forms marked "applicant", and submit such copies to the section.

The section shall accept such fingerprints and shall cause its files to be examined and shall promptly send to the appointing authority, employer, or licensing authority indicated on the form of application, a transcript of the record of previous crimes committed by the person described on the data submitted, or a transcript of the dependency record information regarding the person described on the data submitted, or if there is no record of his or her commission of any crimes, or if there is no dependency record information, a statement to that effect.

~~((3))~~ (4) The Washington state patrol shall charge fees for processing of noncriminal justice system requests for criminal history record information pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the patrol of processing such requests.

Any law enforcement agency may charge a fee not to exceed five dollars for the purpose of taking fingerprint impressions or searching its files of identification for noncriminal purposes.

Sec. 4. RCW 19.16.250 and 1983 c 107 s 1 are each amended to read as follows:

No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (9)(e) of this section.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known

by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: PROVIDED, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, and, in the case of suit, attorney's fees and taxable court costs.

(20) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument; and (f) information on the checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments are currently in the licensee's files that identically match the information provided by the debtor in (c) of this subsection.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

Sec. 5. RCW 19.16.250 and 1983 c 107 s 1 are each amended to read as follows:

No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent:

PROVIDED FURTHER, That the licensee complies with the requirements of subsection (9)(e) of this section.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: PROVIDED, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be

required to pay any sum other than principal, allowable interest, and, in the case of suit, attorney's fees and taxable court costs.

(20) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dishonored

checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

NEW SECTION. Sec. 6. A new section is added to chapter 19.182 RCW to read as follows:

BLOCK OF INFORMATION APPEARING AS A RESULT OF IDENTITY THEFT. (1) Within thirty days of receipt of proof of the consumer's identification and a copy of a filed police report evidencing the consumer's claim to be a victim of a violation of RCW 9.35.020, a consumer reporting agency shall permanently block reporting any information the consumer identifies on his or her consumer report is a result of a violation of RCW 9.35.020, so that the information cannot be reported, except as provided in subsection (2) of this section. The consumer reporting agency shall promptly notify the furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

(2) A consumer reporting agency may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes:

(a) The information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block under this section;

(b) The consumer agrees that the blocked information or portions of the blocked information were blocked in error; or

(c) The consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions.

(3) If the block of information is declined or rescinded under this section, the consumer shall be notified promptly in the same manner as consumers are notified of the reinsertion of information pursuant to section 611 of the fair credit reporting act, 15 U.S.C. Sec. 1681I, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys.

NEW SECTION. Sec. 7. A new section is added to chapter 9.35 RCW to read as follows:

The legislature finds that the practices covered by RCW 9.35.010 and 9.35.020 are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of RCW 9.35.010 or 9.35.020 are not reasonable in relation to the development and preservation of business. A violation of RCW 9.35.010 or 9.35.020 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.

Nothing in RCW 9.35.010 or 9.35.020 limits a victim's ability to receive treble damages under RCW 19.86.090.

Sec. 8. RCW 9.35.010 and 1999 c 368 s 2 are each amended to read as follows:

(1) No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association:

(a) By knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial information repository with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the financial information;

(b) By knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association with the intent to deceive the customer into releasing financial information or authorizing the release of such information;

(c) By knowingly providing any document to an officer, employee, or agent of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association, knowing that the document is forged, counterfeit, lost, or stolen; was fraudulently obtained; or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent to release the financial information.

(2) No person may request another person to obtain financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association and knows or should have known that the person will obtain or attempt to obtain the information from the financial institution repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association in any manner described in subsection (1) of this section.

(3) ~~(As used in this section, unless the context clearly requires otherwise:~~

~~— (a) "Financial information" means, to the extent it is nonpublic, any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:~~

~~— (i) Account numbers and balances;~~

~~— (ii) Transactional information concerning any account; and~~

~~— (iii) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.~~

~~— (b) "Financial information repository" means any person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.~~

~~— (c) "Person" means an individual, partnership, corporation, or association.~~

~~— (4)) No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association when working in conjunction with a law enforcement agency.~~

~~((5)) (4) This section does not apply to:~~

~~(a) Efforts by the financial information repository to test security procedures or systems of the financial institution repository for maintaining the confidentiality of customer information;~~

~~(b) Investigation of alleged employee misconduct or negligence; or~~

~~(c) Efforts to recover financial or personal information of the financial institution obtained or received by another person in any manner described in subsection (1) or (2) of this section.~~

~~((6)) (5) Violation of this section is a class C felony.~~

~~((7)) (6) A person ~~((that [who]))~~ who violates this section is liable for five hundred dollars or actual damages, whichever is greater, and reasonable attorneys' fees. ~~((If the person violating this section is a business that repeatedly violates this section, that person also violates the Consumer Protection Act, chapter 19.86 RCW.))~~~~

Sec. 9. RCW 9.35.020 and 1999 c 368 s 3 are each amended to read as follows:

(1) No person may knowingly obtain, possess, use, or ~~((knowingly))~~ transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any ~~((unlawful activity harming or intending to harm the person whose identity is used, or for committing any felony.~~

~~— (2) For purposes of this section, "means of identification" means any information or item that is not describing finances or credit but is personal to or identifiable with any individual or other person, including any current or former name of the person, telephone number, and electronic address or identifier of the individual or any member of his or her family, including the ancestor of such~~

person; any information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; any social security, driver's license, or tax identification number of the individual or any member of his or her family; and other information which could be used to identify the person, including unique biometric data)) crime.

~~((3))~~ (2)(a) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony.

(b) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value that is less than one thousand five hundred dollars in value, or when no credit, money, goods, services, or anything of value is obtained shall constitute identity theft in the second degree. Identity theft in the second degree is a class C felony.

~~((4))~~ (3) A person ((that [who])) who violates this section is liable for civil damages of five hundred dollars or actual damages, whichever is greater, including costs to repair the ((person's)) victim's credit record, ((whichever is greater,)) and reasonable attorneys' fees((- If the person violating this section is a business that repeatedly violates this section, that person also violates the Consumer Protection Act, chapter 19.86 RCW)) as determined by the court.

(4) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(5) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

(6) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section.

Sec. 10. RCW 9.35.030 and 2000 c 77 s 1 are each amended to read as follows:

(1) It is unlawful for any person to knowingly use a means of identification or financial information of another person to solicit undesired mail with the intent to annoy, harass, intimidate, torment, or embarrass that person.

(2) ~~((For purposes of this section, "means of identification" has the meaning provided in RCW 9.35.020.~~

~~—(3))~~ Violation of this section is a misdemeanor.

~~((4))~~ (3) Additionally, a person who violates this section is liable for civil damages of five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees as determined by the court.

Sec. 11. RCW 9A.82.010 and 1999 c 143 s 40 are each amended to read as follows:

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

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 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);
 - (ii) Improperly obtaining financial information, as defined in RCW 9.35.010;
- or
- (jj) Identity theft, as defined in RCW 9.35.020.
- (5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Sec. 12. RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and 2000 c 66 s 2 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious explosion 3 (RCW 70.74.280(3)) Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii)) Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
IX	Assault of a Child 2 (RCW 9A.36.130) Controlled Substance Homicide (RCW 69.50.415) Explosive devices prohibited (RCW 70.74.180) Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Theft of Anhydrous Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)

- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband I (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder I (RCW 9A.76.170(2)(a))
- Bribery (RCW 9A.68.010)
- Incest I (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- 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))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)
- V Abandonment of dependent person I (RCW 9A.42.060)

- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury I (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))

Hit and Run with Vessel—Injury Accident
(RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2)(a))

Indecent Exposure to Person Under Age
Fourteen (subsequent sex offense) (RCW
9A.88.010)

Influencing Outcome of Sporting Event (RCW
9A.82.070)

Knowingly Trafficking in Stolen Property
(RCW 9A.82.050(2))

Malicious Harassment (RCW 9A.36.080)

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))

Residential Burglary (RCW 9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Use of Proceeds of Criminal Profiteering (RCW
9A.82.080 (1) and (2))

Vehicular Assault (RCW 46.61.522)

Willful Failure to Return from Furlough (RCW
72.66.060)

III Abandonment of dependent person 2 (RCW
9A.42.070)

Assault 3 (RCW 9A.36.031)

Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony (RCW
9A.76.170(2)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral
Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW 9A.46.120)

Criminal Mistreatment 2 (RCW 9A.42.030)

Custodial Assault (RCW 9A.36.100)

Delivery of a material in lieu of a controlled
substance (RCW 69.50.401(c))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- 11 Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))

Improperly Obtaining Financial Information
(RCW 9.35.010)

- Malicious Mischief 1 (RCW 9A.48.070)
- 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))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- 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))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty

- dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 13. RCW 13.40.0357 and 2000 c 66 s 3 are each amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<\$50 is E class) (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+

	Burglary and Trespass	
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
	Drugs	
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030)	D+
E	Possession of Legend Drug (69.41.030)	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(a)(1) (i) or (ii))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(a)(1)(iii))	C
E	Possession of Marihuana <40 grams (69.50.401(e))	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.401(b)(1) (i) or (ii))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic	

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	Counterfeit Substances	
	(69.50.401(b)(1) (iii), (iv), (v))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(d))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(c))	C
	Firearms and Weapons	
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040(1)(b)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
	Homicide	
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+
B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
	Kidnapping	
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
	Obstructing Governmental Operation	
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D

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E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
	Public Disturbance	
C+	Riot with Weapon (9A.84.010)	D+
D+	Riot Without Weapon (9A.84.010)	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
	Sex Crimes	
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
	Theft, Robbery, Extortion, and Forgery	
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E
B	Theft of Livestock (9A.56.080)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+

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C	<u>Identity Theft 1 (9.35.020(2)(a))</u>	D
D	<u>Identity Theft 2 (9.35.020(2)(b))</u>	E
D	<u>Improperly Obtaining Financial Information</u>	E
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
C	Taking Motor Vehicle Without Owner's Permission (9A.56.070)	D
	Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
	Other	
B	Bomb Threat (9.61.160)	C
C	Escape 1' (9A.76.110)	C
C	Escape 2' (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D

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D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200)	V

Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement
 2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, or C.

**OPTION A
 JUVENILE OFFENDER SENTENCING GRID
 STANDARD RANGE**

	A+	180 WEEKS TO AGE 21 YEARS			
	A	103 WEEKS TO 129 WEEKS			
	A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	152-65 WEEKS	180-100 WEEKS	1103-129 WEEKS
Current Offense Category	B+	15-36 WEEKS	152-65 WEEKS	180-100 WEEKS	1103-129 WEEKS
	B	LOCAL SANCTIONS (LS)	115-36 WEEKS		152-65 WEEKS
	C+	LS		115-36 WEEKS	
	C	LS			115-36 WEEKS
		Local Sanctions:			1

		0 to 30 Days			
D+	LS	0 to 12 Months Community Supervision			
		0 to 150 Hours Community Service			
D	LS	\$0 to \$500 Fine			
E	LS				
			0	1	2
				3	4 or more
			PRIOR ADJUDICATIONS		

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

OPTION B

CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

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 a disposition under RCW 13.40.160(4) and 13.40.165.

OR

OPTION C

MANIFEST INJUSTICE

If the court determines that a disposition under option A or B would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

NEW SECTION. Sec. 14. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 15. Section 4 of this act expires April 1, 2004.

NEW SECTION. Sec. 16. Section 5 of this act takes effect April 1, 2004.

Passed the Senate April 16, 2001.
Passed the House April 11, 2001.
Approved by the Governor May 9, 2001.
Filed in Office of Secretary of State May 9, 2001.

CHAPTER 218

[Engrossed House Bill 1015]
GASOLINE ADDITIVES

AN ACT Relating to the use of gasoline additives; and adding a new section to chapter 19.112 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 19.112 RCW to read as follows:

Methyl tertiary-butyl ether may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003, and in no event may methyl tertiary-butyl ether be knowingly mixed in gasoline above six-tenths of one percent by volume.

Passed the House April 20, 2001.
Passed the Senate April 12, 2001.
Approved by the Governor May 9, 2001.
Filed in Office of Secretary of State May 9, 2001.

CHAPTER 219

[House Bill 1138]
PREVAILING WAGE CIVIL PENALTIES

AN ACT Relating to prevailing wage civil penalties; and amending RCW 39.12.050, 39.12.065, and 39.12.080.

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

Sec. 1. RCW 39.12.050 and 1985 c 15 s 3 are each amended to read as follows:

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as

provided by this subsection, such unpaid wages shall constitute a lien against the bonds and retainage as provided in RCW 18.27.040, (~~19.28.120~~) 19.28.041, 39.08.010, and 60.28.010.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period shall commence from the date of the final determination of the appeal.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW.

Sec. 2. RCW 39.12.065 and 1994 c 88 s 1 are each amended to read as follows:

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.010;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the

department of labor and industries as provided in RCW 18.27.040 and ~~((19-28-120))~~ 19.28.041;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this subsection and as an additional sanction shall not be allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, ~~((19-28-120))~~ 19.28.041, 39.08.010, and 60.28.010.

Sec. 3. RCW 39.12.080 and 1993 c 404 s 2 are each amended to read as follows:

The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account, not including moneys transferred to the general fund pursuant to RCW 39.12.070, may be made only for the purposes

of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW.

Passed the House March 13, 2001.
 Passed the Senate April 9, 2001.
 Approved by the Governor May 9, 2001.
 Filed in Office of Secretary of State May 9, 2001.

CHAPTER 220

[Engrossed House Bill 1350]

WATER RIGHT DECISIONS—APPEALS

AN ACT Relating to appeals of water right decisions regarding water rights subject to a general stream adjudication; amending RCW 43.21B.310 and 90.03.210; reenacting and amending RCW 43.21B.110 and 34.05.514; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act.

Sec. 2. RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and 1998 c 36 s 22 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a

decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings conducted by the department (~~relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW~~), or the department's designee, under RCW 90.03.160 through 90.03.210 or 90.44.220

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

Sec. 3. RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9 are each reenacted and amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, proceedings for review under this chapter shall be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of a branch campus if the action involves such branch.

(3) For proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2) involving decisions of the department of ecology on applications for changes or

transfers of water rights that are the subject of a general adjudication of water rights that is being litigated actively under chapter 90.03 or 90.44 RCW, the petition must be filed with the superior court conducting the adjudication, to be consolidated by the court with the general adjudication. A party to the adjudication shall be a party to the appeal under this chapter only if the party files or is served with a petition for review to the extent required by this chapter.

Sec. 4. RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read as follows:

(1) Except as provided in RCW 90.03.210(2), any order issued by the department, the administrator of the office of marine safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order.

(2) The department, the administrator, or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

(a) The appellant's name and address;

(b) The date and docket number of the order, permit, or license appealed;

(c) A description of the substance of the order, permit, or license that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought.

(5) Upon failure to comply with any final order of the department or the administrator, the attorney general, on request of the department or the administrator, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of receipt.

Sec. 5. RCW 90.03.210 and 1988 c 202 s 92 are each amended to read as follows:

(1) During the pendency of such adjudication proceedings prior to judgment or upon review by an appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: PROVIDED, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him, in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just. The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

(2) Any appeal of a decision of the department on an application to change or transfer a water right subject to a general adjudication that is being litigated actively and was commenced before October 13, 1977, shall be conducted as follows:

(a) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.05.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.

(b) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.

(c) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and decision those portions of the department's decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by (a) of this subsection.

(d) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.

(e) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

(3) Nothing in this section shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally

recognized Indian tribe to protect from impairment its federally reserved water rights in federal court.

NEW SECTION. Sec. 6. Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court.

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 House April 22, 2001.

Passed the Senate April 21, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 221

[House Bill 1394]

COUNTY ROAD FUNDS—SALMON RECOVERY

AN ACT Relating to clarifying the use of county road funds in salmon recovery projects; amending RCW 36.79.140 and 36.82.070; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes that projects that remove impediments to fish passage can greatly increase access to spawning and rearing habitat for depressed, threatened, and endangered fish stocks. Although counties are authorized to use county road funds to replace culverts and other barriers to fish passage, and may conduct streambed and stream bank restoration and stabilization work in conjunction with removal of these fish barriers, counties are reluctant to spend county road funds beyond the county right-of-way because it is unclear whether the use of road funds for this purpose is authorized. The purpose of this act is to clarify that streambed and stream bank restoration and stabilization activities conducted in conjunction with removal of existing barriers to fish passage within county rights-of-way constitute a county road purpose even if this work extends beyond the county right-of-way. The legislature intends this act to be permissive legislation. Nothing in this act is intended to create or impose a legal duty upon counties for salmon recovery work beyond the county right-of-way.

Sec. 2. RCW 36.79.140 and 1997 c 81 s 6 are each amended to read as follows:

At the time the board reviews the six-year program of each county each even-numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 36.79.130, the portion of the rural

arterial construction program scheduled to be performed during the biennial period beginning the following July 1st. Subject to the appropriations actually approved by the legislature, the board shall as soon as feasible approve rural arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 36.79.090. Only those counties that during the preceding twelve months have spent all revenues collected for road purposes only for such purposes, including removal of barriers to fish passage and accompanying streambed and stream bank repair as specified in RCW 36.82.070, and including traffic law enforcement, as are allowed to the state by Article II, section 40 of the state Constitution are eligible to receive funds from the rural arterial trust account: PROVIDED HOWEVER, That counties with a population of less than eight thousand are exempt from this eligibility restriction: AND PROVIDED FURTHER, That counties expending revenues collected for road purposes only on other governmental services after authorization from the voters of that county under RCW 84.55.050 are also exempt from this eligibility restriction. The board shall authorize rural arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be placed under contract. At such time the board may reserve rural arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.

The board may, within the constraints of available rural arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting county that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six-year program of the county was developed. The proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 36.79.080.

Sec. 3. RCW 36.82.070 and 1997 c 189 s 1 are each amended to read as follows:

Any money paid to any county road fund may be used for the construction, alteration, repair, improvement, or maintenance of county roads and bridges thereon and for wharves necessary for ferriage of motor vehicle traffic, and for ferries, and for the acquiring, operating, and maintaining of machinery, equipment, quarries, or pits for the extraction of materials, and for the cost of establishing county roads, acquiring rights-of-way therefor, and expenses for the operation of the county engineering office, and for any of the following programs when directly related to county road purposes: (1) Insurance; (2) self-insurance programs; and (3) risk management programs; and for any other proper county road purpose. Such expenditure may be made either independently or in conjunction with the state or any city, town, or tax district within the county. County road purposes also include the removal of barriers to fish passage related to county roads, and include but are not limited to the following activities associated with the removal of these

barriers; Engineering and technical services; stream bank stabilization; streambed restoration; the placement of weirs, rock, or woody debris; planting; and channel modification. County road funds may be used beyond the county right-of-way for activities clearly associated with removal of fish passage barriers that are the responsibility of the county. Activities related to the removal of barriers to fish passage performed beyond the county right-of-way must not exceed twenty-five percent of the total cost of activities related to fish barrier removal on any one project, and the total annual cost of activities related to the removal of barriers to fish passage performed beyond the county rights-of-way must not exceed one-half of one percent of a county's annual road construction budget. The use of county road funds beyond the county right-of-way for activities associated with the removal of fish barriers is permissive, and wholly within the discretion of the county legislative authority. The use of county road funds beyond the county right-of-way for such activities does not create or impose a legal duty upon a county for salmon recovery work beyond the county right-of-way.

Passed the House April 18, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 222

[House Bill 1578]

CRIMINAL PROFITEERING

AN ACT Relating to criminal profiteering; reenacting and amending RCW 9A.82.010, 9A.82.085, 9A.82.090, 9A.82.100, 9A.82.110, 9A.82.120, 9A.82.130, 9A.82.140, 9A.82.150, 9A.82.160, 9A.82.170, and 9.94A.320; reenacting RCW 9A.82.001, 9A.82.020, 9A.82.030, 9A.82.040, 9A.82.045, 9A.82.050, 9A.82.060, 9A.82.070, 9A.82.080, 9A.82.900, and 9A.82.901; 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. The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting, without substantive changes, the Washington laws relating to criminal profiteering, and the sentencing level ranking for criminal profiteering crimes as they existed prior to December 21, 2000.

Sec. 2. RCW 9A.82.001 and 1985 c 455 s 1 are each reenacted to read as follows:

This chapter shall be known as the criminal profiteering act.

Sec. 3. RCW 9A.82.010 and 1999 c 143 s 40, 1995 c 285 s 34, 1995 c 92 s 5, 1994 c 218 s 17, 1992 c 210 s 6, 1992 c 145 s 13, 1989 c 20 s 17, 1988 c 33 s 5, 1986 c 78 s 1, 1985 c 455 s 2, and 1984 c 270 s 1 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.

(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 (as reenacted by this act);

(m) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030 (as reenacted by this act);

(n) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040 (as reenacted by this act);

(o) Collection of an unlawful debt, as defined in RCW 9A.82.045 (as reenacted by this act);

(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 (as reenacted by this act);

(r) Leading organized crime, as defined in RCW 9A.82.060 (as reenacted by this act);

(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.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 (as reenacted by this act) 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 (as reenacted by this act) 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 (as reenacted by this act).

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Sec. 4. RCW 9A.82.020 and 1985 c 455 s 3 and 1984 c 270 s 2 are each reenacted to read as follows:

(1) A person who knowingly makes an extortionate extension of credit is guilty of a class B felony.

(2) In a prosecution under this section, if it is shown that all of the following factors are present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

(a) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable at the time the extension of credit was made through civil judicial processes against the debtor in the county in which the debtor, if a natural person, resided or in every county in

which the debtor, if other than a natural person, was incorporated or qualified to do business.

(b) The extension of credit was made at a rate of interest in excess of an annual rate of forty-five percent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(c) The creditor intended the debtor to believe that failure to comply with the terms of the extension of credit would be enforced by extortionate means.

(d) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars.

Sec. 5. RCW 9A.82.030 and 1985 c 455 s 4 and 1984 c 270 s 3 are each reenacted to read as follows:

A person who advances money or property, whether as a gift, loan, investment, or pursuant to a partnership or profit-sharing agreement or otherwise, to any person, with the knowledge that it is the intention of that person to use the money or property so advanced, directly or indirectly, for the purpose of making extortionate extensions of credit, is guilty of a class B felony.

Sec. 6. RCW 9A.82.040 and 1985 c 455 s 5 and 1984 c 270 s 4 are each reenacted to read as follows:

A person who knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extensions of credit or to punish any person for the nonrepayment thereof, is guilty of a class B felony.

Sec. 7. RCW 9A.82.045 and 1985 c 455 s 6 are each reenacted to read as follows:

It is unlawful for any person knowingly to collect any unlawful debt. A violation of this section is a class C felony.

Sec. 8. RCW 9A.82.050 and 1984 c 270 s 5 are each reenacted to read as follows:

(1) A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.

(2) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

(3) Trafficking in stolen property in the second degree is a class C felony. Trafficking in stolen property in the first degree is a class B felony.

Sec. 9. RCW 9A.82.060 and 1985 c 455 s 7 and 1984 c 270 s 6 are each reenacted to read as follows:

(1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity.

(2) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony, and as defined in subsection (1)(b) of this section is a class B felony.

Sec. 10. RCW 9A.82.070 and 1984 c 270 s 7 are each reenacted to read as follows:

Whoever knowingly gives, promises, or offers to any professional or amateur baseball, football, hockey, polo, tennis, horse race, or basketball player or boxer or any player or referee or other official who participates or expects to participate in any professional or amateur game or sport, or to any manager, coach, or trainer of any team or participant or prospective participant in any such game, contest, or sport, any benefit with intent to influence the person to lose or try to lose or cause to be lost or to limit the person's or person's team's margin of victory or defeat, or in the case of a referee or other official to affect the decisions or the performance of the official's duties in any way, in a baseball, football, hockey, or basketball game, boxing, tennis, horse race, or polo match, or any professional or amateur sport or game, in which the player or participant or referee or other official is taking part or expects to take part, or has any duty or connection therewith, is guilty of a class C felony.

Sec. 11. RCW 9A.82.080 and 1985 c 455 s 8 and 1984 c 270 s 8 are each reenacted to read as follows:

(1) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(3) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

(4) A violation of subsection (1) or (2) of this section is a class B felony. A violation of subsection (3) of this section is a class C felony.

Sec. 12. RCW 9A.82.085 and 1985 c 455 s 9 are each reenacted and amended to read as follows:

In a criminal prosecution alleging a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act), the state is barred from joining any offense other than the offenses alleged to be part of the pattern of criminal profiteering activity. When a defendant has been tried criminally for a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act), the state is barred from subsequently charging the defendant with an offense that was alleged to be part of the pattern of criminal profiteering activity for which he or she was tried.

Sec. 13. RCW 9A.82.090 and 1985 c 455 s 10 and 1984 c 270 s 9 are each reenacted and amended to read as follows:

During the pendency of any criminal case charging a violation of RCW 9A.82.060 (as reenacted by this act) or a violation of RCW 9A.82.080 (as reenacted by this act), the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3) (as reenacted by this act). Upon conviction of a person for a violation of RCW 9A.82.060 (as reenacted by this act) or a violation of RCW 9A.82.080 (as reenacted by this act), the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100 (as reenacted by this act).

Sec. 14. RCW 9A.82.100 and 1989 c 271 s 111, 1985 c 455 s 11, and 1984 c 270 s 10 are each reenacted and amended to read as follows:

(1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity or by a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act).

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act), the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f) (as reenacted by this act).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act), civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitereering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering then to the state general fund or antiprofitereering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act).

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or

participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act).

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act).

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action.

The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120 (as reenacted by this act), or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f) (as reenacted by this act). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f) (as reenacted by this act). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1)(a) and (b)(i) of this section, either party has the right to a jury trial.

Sec. 15. RCW 9A.82.110 and 1985 c 455 s 12 and 1984 c 270 s 11 are each reenacted and amended to read as follows:

(1) Any payments or forfeiture to the state general fund ordered under RCW 9A.82.100 (4) or (5) (as reenacted by this act) shall be deposited in the public safety and education account.

(2) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) (as reenacted by this act) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the public safety and education account.

(3) It is the intent of the legislature that the money deposited in the public safety and education account pursuant to this chapter be appropriated to promote crime victims' compensation.

(4)(a) The county legislative authority may establish an antiprofitereering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) (as reenacted by this act) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the public safety and education account in the state general fund.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitereering revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitereering revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund.

Sec. 16. RCW 9A.82.120 and 1985 c 455 s 13 and 1984 c 270 s 12 are each reenacted and amended to read as follows:

(1) The state, upon filing a criminal action under RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) or a civil action under RCW 9A.82.100 (as reenacted by this act), may file in accordance with this section a criminal profiteering lien. A filing fee or other charge is not required for filing a criminal profiteering lien.

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:

(a) The name of the defendant whose property or other interests are to be subject to the lien;

(b) In the discretion of the attorney general or county prosecuting attorney filing the lien, any aliases or fictitious names of the defendant named in the lien;

(c) If known to the attorney general or county prosecuting attorney filing the lien, the present residence or principal place of business of the person named in the lien;

(d) A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding;

(e) The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed;

(f) A statement that the notice is being filed pursuant to this section;

(g) The amount that the state claims in the action or, with respect to property or other interests that the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited;

(h) If known to the attorney general or county prosecuting attorney filing the lien, a description of property that is subject to forfeiture to the state or property in which the defendant has an interest that is available to satisfy a judgment entered in favor of the state; and

(i) Such other information as the attorney general or county prosecuting attorney filing the lien deems appropriate.

(3) The attorney general or the county prosecuting attorney filing the lien may amend a lien filed under this section at any time by filing an amended criminal profiteering lien in accordance with this section that identifies the prior lien amended.

(4) The attorney general or the county prosecuting attorney filing the lien shall, as soon as practical after filing a criminal profiteering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a criminal profiteering lien filed in accordance with this section.

(5)(a) A criminal profiteering lien is perfected against interests in personal property in the same manner (~~as~~) as a security interest in like property pursuant to RCW 62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305, and 62A.9-306 or as otherwise required to perfect a security interest in like property under applicable law. In the case of perfection by filing, the state shall file, in lieu of a financing statement in the form prescribed by RCW 62A.9-402, a notice of lien in substantially the following form:

NOTICE OF LIEN

Pursuant to RCW 9A.82.120 (as reenacted by this act), the state of Washington claims a criminal profiteering lien on all real and personal property of:

Name:
Address:
.....

State of Washington

.....
By (authorized signature)

On receipt of such a notice from the state, a filing officer shall, without payment of filing fee, file and index the notice as if it were a financing statement naming the state as secured party and the defendant as debtor.

(b) A criminal profiteering lien is perfected against interests in real property by filing the lien in the office where a mortgage on the real estate would be filed or recorded. The filing officer shall file and index the criminal profiteering lien, without payment of a filing fee, in the same manner as a mortgage.

(6) The filing of a criminal profiteering lien in accordance with this section creates a lien in favor of the state in:

(a) Any interest of the defendant, in real property situated in the county in which the lien is filed, then maintained, or thereafter acquired in the name of the defendant identified in the lien;

(b) Any interest of the defendant, in personal property situated in this state, then maintained or thereafter acquired in the name of the defendant identified in the lien; and

(c) Any property identified in the lien to the extent of the defendant's interest therein.

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person who, in the ordinary course of his business, furnishes labor, services, or materials, or rents, leases, or otherwise supplies equipment, without knowledge of the criminal profiteering lien, is superior to the criminal profiteering lien.

(8) Upon entry of judgment in favor of the state, the state may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to such other notice as is required by law, give at least thirty days' notice of the execution to any person possessing at the time the notice is given, an interest recorded subsequent to the date the state's lien was perfected.

(9) Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

(a) In the case of real property or a beneficial interest in real property, relates back to the date of filing the criminal profiteering lien or, if no criminal profiteering lien is filed, then to the date of recording of the final judgment or the abstract thereof; or

(b) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a criminal profiteering lien in accordance with this section, whichever is earlier, but if the property was not seized and no criminal profiteering lien was filed then to the date the final judgment was filed with the department of licensing and, if the personal property is an aircraft, with the federal aviation administration.

(10) This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under RCW 9A.82.100 (as reenacted by this act) or appropriate to protect the interests of the state or available under other applicable law.

(11) In a civil or criminal action under this chapter, the superior court shall provide for the protection of bona fide interests in property, including community property, subject to liens of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f) (as reenacted by this act).

Sec. 17. RCW 9A.82.130 and 1985 c 455 s 14 and 1984 c 270 s 13 are each reenacted and amended to read as follows:

(1) A trustee who is personally served in the manner provided for service of legal process with written notice that a lien notice has been recorded or a civil proceeding or criminal proceeding has been instituted under this chapter against any person for whom the trustee holds legal or record title to real property, shall immediately furnish to the attorney general or county prosecuting attorney the following:

(a) The name and address of the person, as known to the trustee;

(b) To the extent known to the trustee, the name and address of all other persons for whose benefit the trustee holds title to the real property; and

(c) If requested by the attorney general or county prosecuting attorney, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(2) The recording of a lien notice shall not constitute a lien on the record title to real property owned by a trustee at the time of recording except to the extent that trustee is named in and served with the lien notice as provided in subsection (1) of this section. The attorney general or county prosecuting attorney may bring a civil proceeding in superior court against the trustee to recover from the trustee the amounts set forth in RCW 9A.82.150 (as reenacted by this act). In addition to

amounts recovered under RCW 9A.82.150 (as reenacted by this act), the attorney general or county prosecuting attorney also may recover its investigative costs and attorneys' fees.

(3) The recording of a lien notice does not affect the use to which real property or a beneficial interest owned by the person named in the lien notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership except the sale of the property, until a judgment of forfeiture is entered.

(4) This section does not apply to any conveyance by a trustee under a court order unless the court order is entered in an action between the trustee and the beneficiary.

(5) Notwithstanding that a trustee is served with notice as provided in subsection (1) of this section, this section does not apply to a conveyance by a trustee required under the terms of any trust agreement in effect before service of such notice on the trustee.

Sec. 18. RCW 9A.82.140 and 1985 c 455 s 15 and 1984 c 270 s 14 are each reenacted and amended to read as follows:

(1) The term of a lien notice shall be six years from the date the lien notice is recorded. If a renewal lien notice is filed by the attorney general or county prosecuting attorney, the term of the renewal lien notice shall be for six years from the date the renewal lien notice is recorded. The attorney general or county prosecuting attorney is entitled to only one renewal of the lien notice.

(2) The attorney general or county prosecuting attorney filing the lien notice may release in whole or in part any lien notice or may release any specific property or beneficial interest from the lien notice upon such terms and conditions as the attorney general or county prosecuting attorney considers appropriate and shall release any lien upon the dismissal of the action which is the basis of the lien or satisfaction of the judgment of the court in the action or other final disposition of the claim evidenced by the lien. A release of a lien notice executed by the attorney general or county prosecuting attorney shall be recorded in the official records in which the lien notice covering that property was recorded. No charge or fee may be imposed for recording any release of a lien notice.

(3)(a) A person named in the lien notice may move the court in which the civil proceeding giving rise to the lien notice is pending for an order extinguishing the lien notice.

(b) Upon the motion of a person under (a) of this subsection, the court immediately shall enter an order setting a date for hearing, which shall be not less than five nor more than ten days after the motion is filed. The order and a copy of the motion shall be served on the attorney general or county prosecuting attorney within three days after the entry of the court's order. At the hearing, the court shall take evidence on the issue of whether any property or beneficial interest owned by the person is covered by the lien notice or otherwise subject to forfeiture under RCW 9A.82.120 (as reenacted by this act). If the person shows by a

preponderance of the evidence that the lien notice is not applicable to the person or that any property or beneficial interest owned by the person is not subject to forfeiture under RCW 9A.82.120 (as reenacted by this act), the court shall enter a judgment extinguishing the lien notice or releasing the property or beneficial interest from the lien notice.

(c) The court may enter an order releasing from the lien notice any specific real property or beneficial interest if, at the time the lien notice is recorded, there is pending an arms length sale of the real property or beneficial interest in which the parties are under no undue compulsion to sell or buy and are able, willing, and reasonably well informed and the sale is for the fair market value of the real property or beneficial interest and the recording of the lien notice prevents the sale of the property or interest. The proceeds resulting from the sale of the real property or beneficial interest shall be deposited with the court, subject to the further order of the court.

(d) At any time after filing of a lien, the court may release from the lien any property upon application by the defendant and posting of security equal to the value of the property to be released.

Sec. 19. RCW 9A.82.150 and 1985 c 455 s 16 and 1984 c 270 s 15 are each reenacted and amended to read as follows:

(1) If a trustee conveys title to real property for which, at the time of the conveyance, the trustee has been personally served with notice as provided in RCW 9A.82.130(1) (as reenacted by this act) of a lien under this chapter, the trustee shall be liable to the state for the greater of:

(a) The amount of proceeds received by the person named in the lien notice as a result of the conveyance;

(b) The amount of proceeds received by the trustee as a result of the conveyance and distributed by the trustee to the person named in the lien notice; or

(c) The fair market value of the interest of the person named in the lien notice in the real property so conveyed.

(2) If the trustee conveys the real property for which a lien notice has been served on the trustee at the time of the conveyance and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or beneficiary's designee, the trustee's liability shall not exceed the amount of the proceeds so held so long as the trustee continues to hold the proceeds.

Sec. 20. RCW 9A.82.160 and 1985 c 455 s 17 and 1984 c 270 s 16 are each reenacted and amended to read as follows:

A trustee who knowingly fails to comply with RCW 9A.82.130(1) (as reenacted by this act) is guilty of a gross misdemeanor. A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) (as reenacted by this act) with the intent to evade the provisions of RCW

9A.82.100 or 9A.82.120 (as reenacted by this act) with respect to such property is guilty of a class C felony.

Sec. 21. RCW 9A.82.170 and 1985 c 455 s 18 and 1984 c 270 s 17 are each reenacted and amended to read as follows:

(1) Upon request of the attorney general or prosecuting attorney, a subpoena for the production of records of a financial institution may be signed and issued by a superior court judge if there is reason to believe that an act of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 (as reenacted by this act) has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appears reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the financial institution as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(2) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an officer of the financial institution as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(3) Except as provided in this subsection, a financial institution served with a subpoena under this section shall not disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A judge of the superior court may order the attorney general, prosecuting attorney, or financial institution to advise the financial institution's customer of the subpoena. Unless ordered to do so by the court, disclosure of the subpoena by the financial institution or any of its employees to the customer is a misdemeanor.

~~((3)-(4)))~~ (4) A financial institution shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to this section.

~~((4)-(5)))~~ (5) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

~~((5)-(6)))~~ (6) Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

~~((6)-(7)))~~ (7) Upon filing of any civil or criminal action, the nondisclosure requirements of any subpoena or order under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide to the defendant copies of all subpoenas or other orders issued under this section.

~~((7)-(8)))~~ (8) A financial institution shall not be civilly liable for harm resulting from its compliance with the provisions of this chapter.

Sec. 22. RCW 9A.82.900 and 1984 c 270 s 20 are each reenacted to read as follows:

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.

Sec. 23. RCW 9A.82.901 and 1985 c 455 s 20 and 1984 c 270 s 21 are each reenacted to read as follows:

Sections 12, 13, 14, 15, and 16, chapter 270, Laws of 1984 as amended by sections 13, 14, 15, 16, and 17 of this 1985 act shall take effect on July 1, 1986, and the remainder of chapter 270, Laws of 1984 shall take effect on July 1, 1985.

Sec. 24. RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and 2000 c 66 s 2 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a) <u>as reenacted by this act</u>) Malicious explosion 3 (RCW 70.74.280(3))

- Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
 Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- IX Assault of a Child 2 (RCW 9A.36.130)
 Controlled Substance Homicide (RCW 69.50.415)
 Explosive devices prohibited (RCW 70.74.180)
 Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b) (as reenacted by this act))
 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 or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
 Robbery 1 (RCW 9A.56.200)
 Sexual Exploitation (RCW 9.68A.040)
 Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
 Hit and Run—Death (RCW 46.52.020(4)(a))
 Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 Manslaughter 2 (RCW 9A.32.070)
 Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
 Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))

- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Theft of Anhydrous Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII
 - Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
 - Introducing Contraband 1 (RCW 9A.76.140)
 - Involving a minor in drug dealing (RCW 69.50.401(f))
 - Malicious placement of an explosive 3 (RCW 70.74.270(3))
 - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
 - Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
 - Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
 - Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI
 - Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
 - Bribery (RCW 9A.68.010)
 - Incest 1 (RCW 9A.64.020(1))
 - Intimidating a Judge (RCW 9A.72.160)

- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- 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))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030 (as reenacted by this act))
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020 (as reenacted by this act))
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040 (as reenacted by this act))
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)

- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070 (as reenacted by this act))
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2) (as reenacted by this act))
- Malicious Harassment (RCW 9A.36.080)
- 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))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2) (as reenacted by this act))
- Vehicular Assault (RCW 46.61.522)

- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1) (as reenacted by this act))

- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II
 - Computer Trespass I (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)
 - Malicious Mischief I (RCW 9A.48.070)
 - 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))
 - Possession of Stolen Property I (RCW 9A.56.150)
 - Theft I (RCW 9A.56.030)
 - Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
 - Trafficking in Insurance Claims (RCW 48.30A.015)
 - Unlawful Practice of Law (RCW 2.48.180)
 - Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I
 - Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
 - False Verification for Welfare (RCW 74.08.055)
 - Forged Prescription (RCW 69.41.020)

Forged Prescription for a Controlled Substance
(RCW 69.50.403)
Forgery (RCW 9A.60.020)
Malicious Mischief 2 (RCW 9A.48.080)
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))
Possession of Stolen Property 2 (RCW
9A.56.160)
Reckless Burning 1 (RCW 9A.48.040)
Taking Motor Vehicle Without Permission
(RCW 9A.56.070)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-purchased
Property (valued at two hundred fifty
dollars or more but less than one thousand
five hundred dollars) (RCW
9A.56.096(4))
Unlawful Issuance of Checks or Drafts (RCW
9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140
(2) and (3))
Vehicle Prowl 1 (RCW 9A.52.095)

NEW SECTION. Sec. 25. 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 16, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 223

[House Bill 1611]

MISSING PERSONS—RECORDS

AN ACT Relating to missing persons record retention policies; and amending RCW 68.50.320.

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

Sec. 1. RCW 68.50.320 and 1984 c 17 s 18 are each amended to read as follows:

When a person reported missing has not been found within thirty days of the report, the sheriff, chief of police, county coroner or county medical examiner, or

other law enforcement authority initiating and conducting the investigation for the missing person shall ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

When a person reported missing has not been found within thirty days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the county coroner or medical examiner prior to the preparation of a missing person's report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority shall submit a missing person's report and the dental records received under this section to the dental identification system of the state patrol identification and criminal history section on forms supplied by the state patrol for such purpose.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the state patrol. ~~((The dental identification system shall then erase all records with respect to such person.))~~

The dental identification system shall maintain a file of information regarding persons reported to it as missing ~~((and who have not been reported found))~~. The file shall contain the information referred to in this section and such other information as the state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 224

[House Bill 1614]

COMMERCIAL BRIBERY

AN ACT Relating to the crime of commercial bribery; reenacting and amending RCW 9.94A.320; reenacting RCW 9A.68.060; creating a new section; repealing RCW 49.44.070; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, the law relating to the crime of commercial bribery, enacted as sections 29 and 37(5), chapter 285, Laws of 1995.

Sec. 2. RCW 9A.68.060 and 1995 c 285 s 29 are each reenacted to read as follows:

(1) For purposes of this section:

(a) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(b) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(c) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(d) "Trusted person" means:

(i) An agent, employee, or partner of another;

(ii) An administrator, executor, conservator, guardian, receiver, or trustee of a person or an estate, or any other person acting in a fiduciary capacity;

(iii) An accountant, appraiser, attorney, physician, or other professional adviser;

(iv) An officer or director of a corporation, or any other person who participates in the affairs of a corporation, partnership, or unincorporated association; or

(v) An arbitrator, mediator, or other purportedly disinterested adjudicator or referee.

(2) A person is guilty of commercial bribery if:

(a) He or she offers, confers, or agrees to confer a pecuniary benefit directly or indirectly upon a trusted person under a request, agreement, or understanding that the trusted person will violate a duty of fidelity or trust arising from his or her position as a trusted person;

(b) Being a trusted person, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself, herself, or another under a request, agreement, or understanding that he or she will violate a duty of fidelity or trust arising from his or her position as a trusted person; or

(c) Being an employee or agent of an insurer, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself or herself, or a person other than the insurer, under a request, agreement, or understanding that he or she will or a threat that he or she will not refer or induce claimants to have services performed by a service provider.

(3) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because the person had not yet assumed his or her position, lacked authority, or for any other reason.

(4) Commercial bribery is a class B felony.

Sec. 3. RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and 2000 c 66 s 2 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious explosion 3 (RCW 70.74.280(3)) Manufacture of metbamphetamine (RCW 69.50.401(a)(1)(ii)) Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
IX	Assault of a Child 2 (RCW 9A.36.130) Controlled Substance Homicide (RCW 69.50.415) Explosive devices prohibited (RCW 70.74.180) Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII
 - Arson 1 (RCW 9A.48.020)
 - Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
 - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
 - Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
 - Theft of Anhydrous Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII
 - Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)

- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- 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))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)

- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Commercial Bribery (RCW 9A.68.060 as reenacted by this act)
- Counterfeiting (RCW 9.16.035(4))
- Escape 1 (RCW 9A.76.110)

- Hit and Run—Injury (RCW 46.52.020(4)(b))
 - Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
 - Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
 - Influencing Outcome of Sporting Event (RCW 9A.82.070)
 - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
 - Malicious Harassment (RCW 9A.36.080)
 - 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))
 - Residential Burglary (RCW 9A.52.025)
 - Robbery 2 (RCW 9A.56.210)
 - Theft of Livestock 1 (RCW 9A.56.080)
 - Threats to Bomb (RCW 9.61.160)
 - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 - Vehicular Assault (RCW 46.61.522)
 - Willful Failure to Return from Furlough (RCW 72.66.060)
- III
- Abandonment of dependent person 2 (RCW 9A.42.070)
 - Assault 3 (RCW 9A.36.031)
 - Assault of a Child 3 (RCW 9A.36.140)
 - Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
 - Burglary 2 (RCW 9A.52.030)
 - Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
 - Criminal Gang Intimidation (RCW 9A.46.120)
 - Criminal Mistreatment 2 (RCW 9A.42.030)
 - Custodial Assault (RCW 9A.36.100)
 - Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
 - Escape 2 (RCW 9A.76.120)
 - Extortion 2 (RCW 9A.56.130)
 - Harassment (RCW 9A.46.020)

- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Malicious Mischief 1 (RCW 9A.48.070)

- 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))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- 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))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))

Unlawful Issuance of Checks or Drafts (RCW
9A.56.060)

Unlawful Use of Food Stamps (RCW 9.91.140
(2) and (3))

Vehicle Prowl 1 (RCW 9A.52.095)

NEW SECTION. Sec. 4. RCW 49.44.070 (Grafting by employee) and 1909 c 249 s 427 are each repealed.

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

Passed the House April 16, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 225

[Substitute House Bill 1644]

ELECTIONS—RECOUNT PROCEDURES

AN ACT Relating to recount procedures; amending RCW 29.62.090, 29.64.010, 29.64.015, 29.64.020, 29.64.030, 29.64.040, 29.64.051, 29.64.060, and 29.64.080; adding a new section to chapter 29.01 RCW; and adding a new section to chapter 29.64 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 29.01 RCW to read as follows:

"Recount" means the process of retabulating ballots and producing amended election returns based on that retabulation, even if the vote totals have not changed.

Sec. 2. RCW 29.62.090 and 1999 c 298 s 21 are each amended to read as follows:

(1) Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The abstract (~~shall~~) **must** be entered on blanks furnished by the secretary of state or on compatible computer printouts approved by the secretary of state, and **the cumulative report of the election and a copy of the certificate of the election transmitted to the secretary of state immediately, through electronic means and mailed with the abstract of votes** no later than the next business day following the certification by the county canvassing board.

(2) After each general election, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast

in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31st of the year following the election. Absentee ballot results may be incorporated into votes cast at the polls for each precinct or may be reported separately on a precinct-by-precinct basis.

(3) If absentee ballot results are not incorporated into votes cast at the polls, the county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's absentee ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which absentee results are aggregated ~~((shall))~~ must be contiguous.

Sec. 3. RCW 29.64.010 and 1987 c 54 s 3 are each amended to read as follows:

An officer of a political party or any person for whom votes were cast in a primary who was not declared nominated may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for nomination to that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as chairman and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for ~~((a state or local))~~ an office or on a ballot measure ~~((in a jurisdiction that is entirely within one county shall be filed with the county auditor of that county. An application for a recount of the votes cast for a federal office or for any state office or on a ballot measure in a jurisdiction that is not entirely within a single county shall))~~ must be filed with the ~~((secretary of state))~~ officer with whom filings are made for the jurisdiction.

An application for a recount ~~((in a jurisdiction using a vote tally system shall))~~ must specify whether the recount ~~((shall))~~ will be done manually or by the vote tally system. A recount done by the vote tally system ~~((shall use separate and distinct programming from that used in the original count, and))~~ must use programming that recounts and reports only the office or ballot measure in question. The county shall also provide for a ~~((separate and distinct))~~ test of the logic and accuracy of that program.

An application for a recount shall be filed within three business days~~((; excluding Saturdays, Sundays, and holidays;))~~ after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots(~~to the recheck of votes recorded on voting machines;~~) and to the recounting of votes recorded on ballots ((cards and)) counted by a vote tally system.

Sec. 4. RCW 29.64.015 and 1993 c 377 s 1 are each amended to read as follows:

(1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is ((not more)) less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position ((which appears on the ballot in more than one county)) the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29.64.020, 29.64.030, and 29.64.040. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system.

Sec. 5. RCW 29.64.020 and 1991 c 81 s 36 are each amended to read as follows:

An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or

secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29.64.060.

The county canvassing board shall determine a time and a place or places at which the recount will be conducted. This time shall be less than ~~((five))~~ three business days after the day upon which: The application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required under RCW 29.64.015 for an issue or office voted upon only within the county. Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. ((The notice shall be mailed by certified mail not less than two days before the date of the recount.)) The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received the notification. Each attempt to notify affected parties must request a return response indicating that the notice has been received. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount.

Sec. 6. RCW 29.64.030 and 1991 c 81 s 37 are each amended to read as follows:

(1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

~~((At the time and place established for a recanvass of the votes cast on voting devices that do not provide an individual record of the choices of each voter, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the voting devices to be rechecked;~~

and shall verify the votes cast for the offices and issues for which the recount was ordered. Witnesses shall be permitted to watch the recheck of the voting devices. The canvassing board shall not permit the rechecking of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required:))

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

~~((If the canvassing board finds that the results of the votes in the precincts recounted, if substituted for the results of the votes in those precincts as shown in the certified abstract of the votes would not change the result for that office or issue, it shall not recount the ballots of the precincts listed in the application for recount which have not been recounted before the request to stop the recount. The canvassing board shall attach a copy of the request to stop the recount to the partial returns of the recount:))~~

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

NEW SECTION. Sec. 7. A new section is added to chapter 29.64 RCW to read as follows:

When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted in his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question.

This recount will be conducted in a manner consistent with RCW 29.64.015.

Sec. 8. RCW 29.64.040 and 1990 c 59 s 66 are each amended to read as follows:

Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts ~~((shall))~~ must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results

of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election.

Sec. 9. RCW 29.64.051 and 1991 c 90 s 3 are each amended to read as follows:

After ~~((being counted)) the original count, canvass, and certification of results,~~ the votes cast in any single precinct may not be recounted and the results recertified more than twice.

Sec. 10. RCW 29.64.060 and 1990 c 59 s 68 are each amended to read as follows:

The canvassing board shall determine the expenses for conducting a recount of votes ~~((shall be fixed by the canvassing board)).~~

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered.

Sec. 11. RCW 29.64.080 and 1973 c 82 s 1 are each amended to read as follows:

When the official canvass of returns of any election reveals that the difference in the number of votes cast for the approval of a statewide measure and the number of votes cast for the rejection of such measure is ~~((not more)) less than two thousand votes and also less~~ than one-half of one percent of the total number of votes cast on such measure, the secretary of state shall direct that a recount of all votes cast on such measure be made on such measure, in the manner provided by RCW 29.64.030 and 29.64.040, and the cost of such recount ~~((shall)) will~~ be at state expense.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 226

[Substitute House Bill 1680]

PUBLIC WORKS—DESIGN-BUILD PROCEDURES

AN ACT Relating to design-build procedures for public works; adding new sections to chapter 47.20 RCW; adding new sections to chapter 47.60 RCW; 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 a contracting procedure that facilitates construction of transportation facilities in a more timely

manner may occasionally be necessary to ensure that construction can proceed simultaneously with the design of the facility. The legislature further finds that the design-build process and other alternative project delivery concepts achieve the goals of time savings and avoidance of costly change orders.

The legislature finds and declares that a 2001 audit, conducted by Talbot, Korvola & Warwick, examining the Washington state ferries' capital program resulted in a recommendation for improvements and changes in auto ferry procurement processes. The auditors recommended that auto ferries be procured through use of a modified request for proposals process whereby the prevailing shipbuilder and Washington state ferries engage in a design and build partnership. This process promotes ownership of the design by the shipbuilder while using the department of transportation's expertise in ferry design and operations. Alternative processes like design-build partnerships can promote innovation and create competitive incentives that increase the likelihood of finishing projects on time and within the budget.

The purpose of this act is to authorize the department's use of a modified request for proposals process for procurement of auto ferries, and to prescribe appropriate requirements and criteria to ensure that contracting procedures for this procurement process serve the public interest.

NEW SECTION. Sec. 2. A new section is added to chapter 47.20 RCW to read as follows:

The department of transportation shall develop a process for awarding competitively bid highway construction contracts for projects over ten million dollars that may be constructed using a design-build procedure. As used in this section and section 3 of this act, "design-build procedure" means a method of contracting under which the department of transportation contracts with another party for the party to both design and build the structures, facilities, and other items specified in the contract.

The process developed by the department must, at a minimum, include the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures. This section expires April 30, 2008.

NEW SECTION. Sec. 3. A new section is added to chapter 47.20 RCW to read as follows:

The department of transportation may use the design-build procedure for public works projects over ten million dollars where:

- (1) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or
- (2) The projects selected provide opportunity for greater innovation and efficiencies between the designer and the builder; or
- (3) Significant savings in project delivery time would be realized.

This section expires April 30, 2008.

NEW SECTION. Sec. 4. A new section is added to chapter 47.60 RCW to read as follows:

(1) The department may purchase new auto ferries through use of a modified request for proposals process whereby the prevailing shipbuilder and the department engage in a design and build partnership for the design and construction of the auto ferries. The process consists of the three phases described in subsection (2) of this section.

(2) The definitions in this subsection apply throughout sections 5 through 10 of this act.

(a) "Phase one" means the evaluation and selection of proposers to participate in development of technical proposals in phase two.

(b) "Phase two" means the preparation of technical proposals by the selected proposers in consultation with the department.

(c) "Phase three" means the submittal and evaluation of bids, the award of the contract to the successful proposer, and the design and construction of the auto ferries.

NEW SECTION. Sec. 5. A new section is added to chapter 47.60 RCW to read as follows:

To commence the request for proposals process, the department shall publish a notice of its intent once a week for at least two consecutive weeks in at least one trade paper and one other paper, both of general circulation in the state. The notice must contain, but is not limited to, the following information:

(1) The number of auto ferries to be procured, the auto and passenger capacities, the delivery dates, and the estimated price range for the contract;

(2) A statement that a modified request for proposals design and build partnership will be used in the procurement process;

(3) A short summary of the requirements for prequalification of proposers including a statement that prequalification is a prerequisite to submittal of a proposal in phase one; and

(4) An address and telephone number that may be used to obtain a prequalification questionnaire and the request for proposals.

NEW SECTION. Sec. 6. A new section is added to chapter 47.60 RCW to read as follows:

Subject to legislative appropriation for the procurement of vessels, the department shall issue a request for proposals to interested parties that must include, at least, the following:

(1) Solicitation of a proposal to participate in a design and build partnership with the department to design and construct the auto ferries;

(2) Instructions on the prequalification process and procedures;

(3) A description of the modified request for proposals process. Under this process, the department may modify any component of the request for proposals,

including the outline specifications, by addendum at any time before the submittal of bids in phase three;

(4) A description of the design and build partnership process to be used for procurement of the vessels;

(5) Outline specifications that provide the requirements for the vessels including, but not limited to, items such as length, beam, displacement, speed, propulsion requirements, capacities for autos and passengers, passenger space characteristics, and crew size. The department will produce notional line drawings depicting hull geometry that will interface with Washington state ferries terminal facilities. Notional lines may be modified in phase two, subject to approval by the department;

(6) Instructions for the development of technical proposals in phase two, and information regarding confidentiality of technical proposals;

(7) The vessel delivery schedule, identification of the port on Puget Sound where delivery must take place, and the location where acceptance trials must be held;

(8) The estimated price range for the contract;

(9) The form and amount of the required bid deposit and contract security;

(10) A copy of the contract that will be signed by the successful proposer;

(11) The date by which proposals in phase one must be received by the department in order to be considered;

(12) A description of information to be submitted in the proposals in phase one concerning each proposer's qualifications, capabilities, and experience;

(13) A statement of the maximum number of proposers that may be selected in phase one for development of technical proposals in phase two;

(14) Criteria that will be used for the phase one selection of proposers to participate in the phase two development of technical proposals;

(15) A description of the process that will be used for the phase three submittal and evaluation of bids, award of the contract, and postaward administrative activities;

(16) A requirement that the contractor comply with all applicable laws, rules, and regulations including but not limited to those pertaining to the environment, worker health and safety, and prevailing wages;

(17) A requirement that the vessels be constructed within the boundaries of the state of Washington except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection. For the purposes of this subsection, "constructed" means the fabrication, by the joining together by welding or fastening of all steel parts from which the total vessel is constructed, including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means the installation of all components and systems, including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint, and joiner work required by the

contract. "Constructed" also means the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting; and

(18) A requirement that all warranty work on the vessel must be performed within the boundaries of the state of Washington, insofar as practical.

NEW SECTION. Sec. 7. A new section is added to chapter 47.60 RCW to read as follows:

Phase one of the request for proposals process consists of evaluation and selection of prequalified proposers to participate in subsequent development of technical proposals in phase two, as follows:

(1) The department shall issue a request for proposals to interested parties.

(2) The request for proposals must require that each proposer prequalify for the contract under chapter 468-310 WAC, except that the department may adopt rules for the financial prequalification of proposers for this specific contract only. The department shall modify the financial prequalification rules in chapter 468-310 WAC in order to maximize competition among financially capable and otherwise qualified proposers. In adopting these rules, the department shall consider factors including, without limitation: (a) Shipyard resources in Washington state; (b) the cost to design and construct multiple vessels under a single contract without options; and (c) the sequenced delivery schedule for the vessels.

(3) The department may use some, or all, of the nonfinancial prequalification factors as part of the evaluation factors in phase one to enable the department to select a limited number of best qualified proposers to participate in development of technical proposals in phase two.

(4) The department shall evaluate submitted proposals in accordance with the selection criteria established in the request for proposals. Selection criteria may include, but are not limited to, the following:

- (a) Shipyard facilities;
- (b) Organization components;
- (c) Design capability;
- (d) Build strategy;
- (e) Experience and past performance;
- (f) Ability to meet vessel delivery dates;
- (g) Projected workload; and
- (h) Expertise of project team and other key personnel.

(5) Upon concluding its evaluation of proposals, the department shall select the best qualified proposers in accordance with the request for proposals. The selected proposers must participate in development of technical proposals. Selection must be made in accordance with the selection criteria stated in the request for proposals. All proposers must be ranked in order of preference as derived from the same selection criteria.

NEW SECTION. Sec. 8. A new section is added to chapter 47.60 RCW to read as follows:

Phase two of the request for proposals process consists of preparation of technical proposals in consultation with the department, as follows:

(1) The development of technical proposals in compliance with the detailed instructions provided in the request for proposals, including the outline specifications, and any addenda to them. Technical proposals must include the following:

(a) Design and specifications sufficient to fully depict the ferries' characteristics and identify installed equipment;

(b) Drawings showing arrangements of equipment and details necessary for the proposer to develop a firm, fixed price bid;

(c) Project schedule including vessel delivery dates; and

(d) Other appropriate items.

(2) The department shall conduct periodic reviews with each of the selected proposers to consider and critique their designs, drawings, and specifications. These reviews must be held to ensure that technical proposals meet the department's requirements and are responsive to the critiques conducted by the department during the development of technical proposals.

(3) If, as a result of the periodic technical reviews or otherwise, the department determines that it is in the best interests of the department to modify any element of the request for proposals, including the outline specifications, it shall do so by written addenda to the request for proposals.

(4) Proposers must submit final technical proposals for approval that include design, drawings, and specifications at a sufficient level of detail to fully depict the ferries' characteristics and identify installed equipment, and to enable a proposer to deliver a firm, fixed price bid to the department. The department shall reject final technical proposals that modify, fail to conform to, or are not fully responsive to and in compliance with the requirements of the request for proposals, including the outline specifications, as amended by addenda.

NEW SECTION. Sec. 9. A new section is added to chapter 47.60 RCW to read as follows:

Phase three consists of the submittal and evaluation of bids and the award of the contract to the successful proposer for the final design and construction of the auto ferries, as follows:

(1) The department shall request bids for detailed design and construction of the vessels after completion of the review of technical proposals in phase two. The department will review detailed design drawings in phase three for conformity with the technical proposals submitted in phase two. In no case may the department's review replace the builder's responsibility to deliver a product meeting the phase two technical proposal. The department may only consider bids from selected proposers that have qualified to bid by submitting technical proposals that have been approved by the department.

(2) Each qualified proposer must submit its total bid price for all vessels, including certification that the bid is based upon its approved technical proposal and the request for proposals.

(3) Bids constitute an offer and remain open for ninety days from the date of the bid opening. A deposit in cash, certified check, cashier's check, or surety bond in an amount specified in the request for proposals must accompany each bid and no bid may be considered unless the deposit is enclosed.

(4) The department shall evaluate the submitted bids. Upon completing the bid evaluation, the department may select the responsive and responsible proposer that offers the lowest total bid price for all vessels.

(5) The department may waive informalities in the proposal and bid process, accept a bid from the lowest responsive and responsible proposer, reject any or all bids, republish, and revise or cancel the request for proposals to serve the best interests of the department.

(6) The department may:

(a) Award the contract to the proposer that has been selected as the responsive and responsible proposer that has submitted the lowest total bid price;

(b) If a contract cannot be signed with the apparent successful proposer, award the contract to the next lowest responsive and responsible proposer; or

(c) If necessary, repeat this procedure with each responsive and responsible proposer in order of rank until the list of those proposers has been exhausted.

(7) If the department awards a contract to a proposer under this section, and the proposer fails to enter into the contract and furnish satisfactory contract security as required by chapter 39.08 RCW within twenty days from the date of award, its deposit is forfeited to the state and will be deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a ferry design and construction contract all proposal deposits will be returned.

(8) The department may provide an honorarium to reimburse each unsuccessful phase three proposer for a portion of its technical proposal preparation costs at a preset, fixed amount to be specified in the request for proposals. If the department rejects all bids, the department may provide the honoraria to all phase three proposers that submitted bids.

NEW SECTION. Sec. 10. A new section is added to chapter 47.60 RCW to read as follows:

(1) The department shall immediately notify those proposers that are not selected to participate in development of technical proposals in phase one and those proposers who submit unsuccessful bids in phase three.

(2) The department's decision is conclusive unless an aggrieved proposer files an appeal with the superior court of Thurston county within five days after receiving notice of the department's award decision. The court shall hear any such appeal on the department's administrative record for the project. The court may affirm the decision of the department, or it may reverse or remand the

administrative decision if it determines the action of the department was arbitrary and capricious.

Passed the House April 20, 2001.

Passed the Senate April 20, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 227

[Engrossed Substitute House Bill 1785]

CAPITAL BUDGET PROGRAMS INVESTING IN THE ENVIRONMENT

AN ACT Relating to implementing the recommendations of the joint legislative audit and review committee report regarding capital budget programs investing in the environment; amending RCW 79.24.580; adding a new section to chapter 43.41 RCW; adding a new section to chapter 89.08 RCW; adding a new section to chapter 90.64 RCW; adding a new section to chapter 70.105D RCW; adding a new section to chapter 70.146 RCW; adding a new section to chapter 79A.15 RCW; adding a new section to chapter 77.85 RCW; adding a new section to chapter 43.155 RCW; adding a new section to chapter 77.04 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the amount of overall requests for funding for natural resource-related programs in the capital budget has been steadily growing. The legislature also finds that there is an increasing interest by the public in examining the performance of the projects and programs to determine the return on their investments and that a coordinated and integrated response by state agencies will allow for better targeting of resources. The legislature further finds that there is a need to improve the data and the integration of data that is collected by state agencies and grant and loan recipients in order to better measure the outcomes of projects and programs. The legislature intends to begin implementing the recommendations contained in the joint legislative audit and review committee's report number 01-1 on investing in the environment in order to improve the efficiency, effectiveness, and accountability of these natural resource-related programs funded in the state capital budget.

NEW SECTION. Sec. 2. A new section is added to chapter 43.41 RCW to read as follows:

(1) The office of financial management shall assist natural resource-related agencies in developing outcome focused performance measures for administering natural resource-related and environmentally based grant and loan programs. These performance measures are to be used in determining grant eligibility, for program management and performance assessment.

(2) The office of financial management and the governor's salmon recovery office shall assist natural resource-related agencies in developing recommendations for a monitoring program to measure outcome focused performance measures required by this section. The recommendations must be consistent with the framework and coordinated monitoring strategy developed by the monitoring

oversight committee established in RCW 77.85.— (section 3, Substitute Senate Bill No. 5637, Laws of 2001).

(3) Natural resource agencies shall consult with grant or loan recipients including local governments, tribes, nongovernmental organizations, and other interested parties, and report to the office of financial management on the implementation of this section. The office of financial management shall report to the appropriate legislative committees of the legislature on the agencies' implementation of this section, including any necessary changes in current law, and funding requirements by July 31, 2002. Natural resource agencies shall assist the office of financial management in preparing the report, including complying with time frames for submitting information established by the office of financial management.

(4) For purposes of this section, "natural resource-related agencies" include the department of ecology, the department of natural resources, the department of fish and wildlife, the state conservation commission, the interagency committee for outdoor recreation, the salmon recovery funding board, and the public works board within the department of community, trade, and economic development.

(5) For purposes of this section, "natural resource-related environmentally based grant and loan programs" includes the conservation reserve enhancement program; dairy nutrient management grants under chapter 90.64 RCW; state conservation commission water quality grants under chapter 89.08 RCW; coordinated prevention grants, public participation grants, and remedial action grants under RCW 70.105D.070; water pollution control facilities financing under chapter 70.146 RCW; aquatic lands enhancement grants under RCW 79.24.580; habitat grants under the Washington wildlife and recreation program under RCW 79A.15.040; salmon recovery grants under chapter 77.85 RCW; and the public work trust fund program under chapter 43.155 RCW. The term also includes programs administered by the department of fish and wildlife related to protection or recovery of fish stocks which are funded with moneys from the capital budget.

NEW SECTION. Sec. 3. A new section is added to chapter 89.08 RCW to read as follows:

In administering grant programs to improve water quality and protect habitat, the commission shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the commission shall utilize the statement of environmental benefit in its grant prioritization and selection process. The commission shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the grant program. The commission shall work with the districts to develop uniform performance measures across participating districts. To the extent possible, the commission should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The commission shall consult with affected interest groups in implementing this section.

NEW SECTION. Sec. 4. A new section is added to chapter 90.64 RCW to read as follows:

In providing grants to dairy producers, districts shall require grant applicants to incorporate the environmental benefits of the project into their applications, and the districts shall utilize the statement of environmental benefit in their prioritization and selection process. The districts shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the program. The commission shall work with the districts to develop uniform performance measures across participating districts. To the extent possible, the commission should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The commission shall consult with affected interest groups in implementing this section.

NEW SECTION. Sec. 5. A new section is added to chapter 70.105D RCW to read as follows:

In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit in its prioritization and selection process. The department shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The department shall consult with affected interest groups in implementing this section.

NEW SECTION. Sec. 6. A new section is added to chapter 70.146 RCW to read as follows:

In providing grants and loans to local governments, the department shall require recipients to incorporate the environmental benefits of the project into their applications, and the department shall utilize the statement of environmental benefits in its grant and loan prioritization and selection process. The department shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the grant and loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The department shall consult with affected interest groups in implementing this section.

Sec. 7. RCW 79.24.580 and 1999 c 309 s 919 are each amended to read as follows:

After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement

account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects.

In providing grants for aquatic lands enhancement projects, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefits in its prioritization and selection process. The department shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the grants. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The department shall consult with affected interest groups in implementing this section.

During the fiscal biennium ending June 30, 2001, the funds may be appropriated for boating safety, shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock.

NEW SECTION. Sec. 8. A new section is added to chapter 79A.15 RCW to read as follows:

In providing grants through the habitat conservation account, the committee shall require grant applicants to incorporate the environmental benefits of the project into their grant applications, and the committee shall utilize the statement of environmental benefits in the grant application and review process. The committee shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the committee should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The committee shall consult with affected interest groups in implementing this section.

NEW SECTION. Sec. 9. A new section is added to chapter 77.85 RCW to read as follows:

In providing funding for habitat projects, the salmon recovery funding board shall require recipients to incorporate the environmental benefits of the project into their grant applications, and the board shall utilize the statement of environmental benefits in its prioritization and selection process. The board shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the board should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The board shall consult with affected interest groups in implementing this section.

NEW SECTION. Sec. 10. A new section is added to chapter 43.155 RCW to read as follows:

In providing loans for public works projects, the board shall require recipients to incorporate the environmental benefits of the project into their applications, and the board shall utilize the statement of environmental benefits in its prioritization and selection process. The board shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The board shall consult with affected interest groups in implementing this section.

NEW SECTION. Sec. 11. A new section is added to chapter 77.04 RCW to read as follows:

In administering programs funded with moneys from the capital budget related to protection or recovery of fish stocks, the department shall incorporate the environmental benefits of a project into its prioritization and selection process. The department shall also develop appropriate outcome focused performance measures to be used both for management and performance assessment of the program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in section 2 of this act. The department shall consult with affected interest groups in implementing this section.

Passed the House April 17, 2001.

Passed the Senate April 12, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 228

[Substitute House Bill 1821]

DUNGENESS CRAB RESOURCE PLAN

AN ACT Relating to the consideration of extenuating circumstances for gear and effort reduction for the coastal Dungeness crab resource plan provisions; amending RCW 77.70.400; and creating a new section.

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

Sec. 1. RCW 77.70.400 and 1998 c 245 s 154 are each amended to read as follows:

The department, with input from Dungeness crab—coastal fishery licensees and processors, shall prepare a resource plan to achieve even-flow harvesting and long-term stability of the coastal Dungeness crab resource. The plan may include pot limits, further reduction in the number of vessels, individual quotas, trip limits, area quotas, or other measures as determined by the department. The provisions of such a resource plan that are designed to effect a gear reduction or effort

reduction based upon historical landing criteria are subject to the provisions of RCW 77.70.390 with respect to the consideration of extenuating circumstances.

NEW SECTION. Sec. 2. For the purposes of determining the number of shellfish pots assigned to a license authorizing commercial harvest of Dungeness crab adjacent to the Washington coast, if the license is held by a person whose vessel designated for use under that license was lost due to sinking in any one of the three qualifying seasons, then the department of fish and wildlife shall use the landings in February 1996 to determine the number of pots granted to the license holder as an exception to WAC 220-52-040(14). A license holder must notify the department of his or her eligibility under this section by September 30, 2001.

Passed the House April 16, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 229

[House Bill 1865]

WATERSHED PLANNING

AN ACT Relating to irrigation districts acting as initiating governments for watershed planning; and amending RCW 90.82.060.

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

Sec. 1. RCW 90.82.060 and 1998 c 247 s 2 are each amended to read as follows:

(1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city

or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

Passed the House April 13, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 230

[House Bill 1898]

EMERGENCY RESPITE CENTERS

AN ACT Relating to the licensing of crisis nurseries; amending RCW 74.15.020; and adding a new section to chapter 74.15 RCW.

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

Sec. 1. RCW 74.15.020 and 1999 c 267 s 11 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) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(f) "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))~~ (g) "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))~~ (h) "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))~~ (i) "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))~~ (j) "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))~~ (k) "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))~~ (l) "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. 2. A new section is added to chapter 74.15 RCW to read as follows:

The secretary is authorized to license emergency respite centers. The department may adopt rules to specify licensing requirements for emergency respite centers.

Passed the House April 20, 2001.
 Passed the Senate April 5, 2001.
 Approved by the Governor May 9, 2001.
 Filed in Office of Secretary of State May 9, 2001.

CHAPTER 231

[Substitute House Bill 1950]

INDUSTRIAL INSURANCE—WORKER RIGHTS

AN ACT Relating to worker rights under industrial insurance; amending RCW 51.28.010 and 51.28.020; creating a new section; and providing an effective date.

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

Sec. 1. RCW 51.28.010 and 1977 ex.s. c 350 s 32 are each amended to read as follows:

(1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or ~~((foreman or forewoman))~~ supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025~~((as now or hereafter amended;))~~ where the worker has received treatment from a physician, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and must list the types of providers authorized to provide these services.

Sec. 2. RCW 51.28.020 and 1984 c 159 s 3 are each amended to read as follows:

(1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her ~~((self-insuring))~~ self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician who attended him or her~~((; and it shall be the duty of))~~. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) ~~The physician ((to)) who attended the injured worker shall~~ inform the injured worker of his or her rights under this title and ~~((to))~~ lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the

procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If application for compensation is made to a ~~((self-insuring))~~ self-insured employer, he or she shall forthwith send a copy ~~((thereof))~~ of the application to the department.

NEW SECTION. Sec. 3. By January 1, 2002, the department of labor and industries must develop the forms required under sections 1 and 2 of this act, and these forms must be in use by the department and self insured employers by July 1, 2002.

NEW SECTION. Sec. 4. This act takes effect January 1, 2002.

Passed the House April 13, 2001.

Passed the Senate April 6, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 232

[Substitute Senate Bill 5077]

SHERIFF'S EMPLOYEES—TEMPORARY APPOINTMENT

AN ACT Relating to the provisional employment of sheriff's employees; and amending RCW 41.14.060.

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

Sec. 1. RCW 41.14.060 and 1979 ex.s. c 153 s 2 are each amended to read as follows:

It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions hereof. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, reallocations, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) To give practical tests which shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made. Such tests may include tests of physical fitness or manual skill or both.

(3) To make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; to inspect all departments, offices, places,

positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, may administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation and also cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered and the subpoenas issued hereunder shall have the same force and effect as the oaths administered and subpoenas issued by a superior court judge in his judicial capacity; and the failure of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(4) To conduct hearings and investigations in accordance with this chapter and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission: PROVIDED, That no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(5) To hear and determine appeals or complaints respecting the allocation of positions, the rejection of an examinee, and such other matters as may be referred to the commission.

(6) To provide for, formulate, and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and provide that persons laid off, or who have accepted voluntary demotion in lieu of layoff, because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed or reinstated in their former job class.

(7) To certify to the appointing authority, when a vacant position is to be filled, on written request, the names of the three persons highest on the eligible list for the class. If there is no such list, to authorize a provisional or temporary appointment list for such class. ~~((Such temporary provisional appointment shall not continue for a period longer than four months, nor shall any person receive~~

~~more than one provisional appointment or serve more than four months as provisional appointee in any one fiscal year.)) A temporary appointment expires after four months. However, the appointing authority may extend the temporary appointment beyond the four-month period up to one year if the commission continues to advertise and test for the position. If, after one year from the date the initial temporary appointment was first made, there are less than three persons on the eligible list for the class, then the appointing authority may fill the position with any person or persons on the eligible list.~~

(8) To keep such records as may be necessary for the proper administration of this chapter.

Passed the Senate April 16, 2001.

Passed the House April 6, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 233

[Substitute Senate Bill 5184]

DEPARTMENT OF SOCIAL AND HEALTH SERVICES—INVESTIGATIONS

AN ACT Relating to requiring the department of social and health services to notify relevant agencies of investigative outcomes; adding a new section to chapter 74.34 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes that vulnerable adults, while living in their own homes, may be abused, neglected, financially exploited, or abandoned by individuals entrusted to provide care for them. The individuals who abuse, neglect, financially exploit, or abandon vulnerable adults may be employed by, under contract with, or volunteering for an agency or program providing care for vulnerable adults. The legislature has given the department of social and health services the responsibility to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and other legal remedies to protect these vulnerable adults. The legislature finds that in order to continue to protect vulnerable adults, the department of social and health services be given the authority to release report information and to release the results of an investigation to the agency or program with which the individual investigated is employed, contracted, or engaged as a volunteer.

NEW SECTION. Sec. 2. A new section is added to chapter 74.34 RCW to read as follows:

(1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or

programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-home services agency licensed under chapter 70.127 RCW, a program authorized under chapter 71A.12 RCW, an adult day care or day health program, regional support networks authorized under chapter 71.24 RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section.

Passed the Senate April 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 234

[Substitute Senate Bill 6110]

PUGET SOUND CRAB POT BUOY TAG PROGRAM

AN ACT Relating to the Puget Sound crab pot buoy tag program; adding new sections to chapter 77.70 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 77.70 RCW to read as follows:

In order to administer a Puget Sound crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—Puget Sound fishery license to reimburse the department for the production of Puget Sound crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program.

NEW SECTION. **Sec. 2.** A new section is added to chapter 77.70 RCW to read as follows:

The Puget Sound crab pot buoy tag account is created in the custody of the state treasurer. All revenues from fees from section 1 of this act must be deposited into the account. Expenditures from this account may be used for the production of crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures.

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 Senate April 17, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 235

[Engrossed Substitute Senate Bill 5372]

CIGARETTE TAX CONTRACTS

AN ACT Relating to cooperative agreements concerning the taxation of cigarettes sold on Indian lands; amending RCW 82.24.510; adding new sections to chapter 43.06 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.24 RCW; creating a new section; repealing RCW 82.24.070; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature intends to further the government-to-government relationship between the state of Washington and Indians in the state of Washington by authorizing the governor to enter into contracts concerning the sale of cigarettes. The legislature finds that these cigarette tax contracts will provide a means to promote economic development, provide needed revenues for tribal governments and Indian persons, and enhance enforcement of the state's cigarette tax law, ultimately saving the state money and reducing conflict. In addition, it is the intent of the legislature that the negotiations and the ensuing contracts shall have no impact on the state's share of the proceeds under the master settlement agreement entered into on November 23, 1998, by the state. This act does not constitute a grant of taxing authority to any Indian tribe nor does it provide precedent for the taxation of non-Indians on fee land.

NEW SECTION. Sec. 2. A new section is added to chapter 43.06 RCW to read as follows:

(1) The governor may enter into cigarette tax contracts concerning the sale of cigarettes. All cigarette tax contracts shall meet the requirements for cigarette tax contracts under this section. Except for cigarette tax contracts under section 3 of this act, the rates, revenue sharing, and exemption terms of a cigarette tax contract are not effective unless authorized in a bill enacted by the legislature.

(2) Cigarette tax contracts shall be in regard to retail sales in which Indian retailers make delivery and physical transfer of possession of the cigarettes from the seller to the buyer within Indian Country, and are not in regard to transactions by non-Indian retailers. In addition, contracts shall provide that retailers shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(3) A cigarette tax contract with a tribe shall provide for a tribal cigarette tax in lieu of all state cigarette taxes and state and local sales and use taxes on sales of

cigarettes in Indian Country by Indian retailers. The tribe may allow an exemption for sales to tribal members.

(4) Cigarette tax contracts shall provide that all cigarettes possessed or sold by a retailer shall bear a cigarette stamp obtained by wholesalers from a bank or other suitable stamp vendor and applied to the cigarettes. The procedures to be used by the tribe in obtaining tax stamps must include a means to assure that the tribal tax will be paid by the wholesaler obtaining such cigarettes. Tribal stamps must have serial numbers or some other discrete identification so that each stamp can be traced to its source.

(5) Cigarette tax contracts shall provide that retailers shall purchase cigarettes only from:

(a) Wholesalers or manufacturers licensed to do business in the state of Washington;

(b) Out-of-state wholesalers or manufacturers who, although not licensed to do business in the state of Washington, agree to comply with the terms of the cigarette tax contract, are certified to the state as having so agreed, and who do in fact so comply. However, the state may in its sole discretion exercise its administrative and enforcement powers over such wholesalers or manufacturers to the extent permitted by law;

(c) A tribal wholesaler that purchases only from a wholesaler or manufacturer described in (a), (b), or (d) of this subsection; and

(d) A tribal manufacturer.

(6) Cigarette tax contracts shall be for renewable periods of no more than eight years. A renewal may not include a renewal of the phase-in period.

(7) Cigarette tax contracts shall include provisions for compliance, such as transport and notice requirements, inspection procedures, stamping requirements, recordkeeping, and audit requirements.

(8) Tax revenue retained by a tribe must be used for essential government services. Use of tax revenue for subsidization of cigarette and food retailers is prohibited.

(9) The cigarette tax contract may include provisions to resolve disputes using a nonjudicial process, such as mediation.

(10) The governor may delegate the power to negotiate cigarette tax contracts to the department of revenue. The department of revenue shall consult with the liquor control board during the negotiations.

(11) Information received by the state or open to state review under the terms of a contract is subject to the provisions of RCW 82.32.330.

(12) It is the intent of the legislature that the liquor control board and the department of revenue continue the division of duties and shared authority under chapter 82.24 RCW and therefore the liquor control board is responsible for enforcement activities that come under the terms of chapter 82.24 RCW.

(13) Each cigarette tax contract shall include a procedure for notifying the other party that a violation has occurred, a procedure for establishing whether a

violation has in fact occurred, an opportunity to correct such violation, and a provision providing for termination of the contract should the violation fail to be resolved through this process, such termination subject to mediation should the terms of the contract so allow. A contract shall provide for termination of the contract if resolution of a dispute does not occur within twenty-four months from the time notification of a violation has occurred. Intervening violations do not extend this time period. In addition, the contract shall include provisions delineating the respective roles and responsibilities of the tribe, the department of revenue, and the liquor control board.

(14) For purposes of this section and sections 3 through 6 of this act:

(a) "Essential government services" means services such as tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development;

(b) "Indian retailer" or "retailer" means (i) a retailer wholly owned and operated by an Indian tribe, (ii) a business wholly owned and operated by a tribal member and licensed by the tribe, or (iii) a business owned and operated by the Indian person or persons in whose name the land is held in trust; and

(c) "Indian tribe" or "tribe" means a federally recognized Indian tribe located within the geographical boundaries of the state of Washington.

NEW SECTION. Sec. 3. A new section is added to chapter 43.06 RCW to read as follows:

(1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, and the Upper Skagit Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract. Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in section 2(3) of this act.

(2) A cigarette tax contract under this section is subject to section 2 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to section 2 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of cigarettes sold by an Indian retailer during the effective period of a cigarette tax contract subject to section 2 of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 82.24 RCW to read as follows:

(1) The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to section 2 of this act.

(2) Effective July 1, 2002, wholesalers and retailers subject to the provisions of this chapter shall be allowed compensation for their services in affixing the stamps required under this chapter a sum computed at the rate of six dollars per one thousand stamps purchased or affixed by them.

NEW SECTION. Sec. 7. RCW 82.24.070 (Compensation of dealers), as now or hereafter amended, and 1987 c 496 s 5, 1987 c 80 s 2, 1971 ex.s. c 299 s 14, 1965 ex.s. c 173 s 24, 1961 ex.s. c 24 s 4, & 1961 c 15 s 82.24.070 are each repealed.

Sec. 8. RCW 82.24.510 and 1986 c 321 s 5 are each amended to read as follows:

(1) The licenses issuable under this chapter are as follows:

(a) A wholesaler's license.

(b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department of revenue shall adopt rules regarding the regulation of the licenses. The department of revenue may refrain from the issuance of any license under this chapter if the department has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license and for considering the denial, suspension, or revocation of any such license, the department may consider criminal convictions of the applicant related to the selling of cigarettes within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The department may, in its

discretion, grant or refuse the wholesaler's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license under this section without first undergoing a criminal background check. The background check shall be performed by the liquor control board and must disclose any criminal convictions related to the selling of cigarettes within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on the effective date of this section is subject to this subsection and subsection (2) of this section beginning on the date of the person's master license expiration, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 RCW, the background check done under the authority of chapter 66.24 RCW satisfies the requirements of this section.

(4) Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department of revenue made pursuant thereto.

NEW SECTION. Sec. 9. Section 7 of this act takes effect July 1, 2002.

Passed the Senate April 16, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.

CHAPTER 236

[Substitute Senate Bill 5905]

TRIBAL/STATE GAMING COMPACTS—JURISDICTION

AN ACT Relating to the negotiation, enforcement, and resolution of disputes regarding tribal/state gaming compacts under the federal Indian gaming regulatory act of 1988; adding a new section to chapter 9.46 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.46 RCW to read as follows:

Until July 30, 2007, the state consents to the jurisdiction of the federal courts in actions brought by a tribe pursuant to the Indian gaming regulatory act of 1988 or seeking enforcement of a state/tribal compact adopted under the Indian gaming regulatory act, conditioned upon the tribe entering into such a compact and providing similar consent. This limited waiver of sovereign immunity shall not extend to actions other than those expressly set forth herein and properly filed on or before July 29, 2007.

This section expires July 30, 2007.

Passed the Senate April 17, 2001.
Passed the House April 9, 2001.
Approved by the Governor May 9, 2001.
Filed in Office of Secretary of State May 9, 2001.

CHAPTER 237

[Engrossed Substitute House Bill 1832]
WATER RESOURCES MANAGEMENT

AN ACT Relating to water resources management; amending RCW 90.82.040, 90.82.130, 90.03.380, 90.80.005, 90.80.010, 90.80.050, 90.80.070, 90.80.080, 90.80.090, 90.80.100, 90.80.120, 90.80.130, 90.80.140, 90.80.150, 90.66.040, 90.66.060, 90.14.140, 90.38.020, 90.38.040, 90.42.040, and 90.42.080; adding a new section to chapter 90.82 RCW; adding new sections to chapter 90.80 RCW; adding a new section to chapter 90.66 RCW; adding a new section to chapter 82.16 RCW; creating new sections; prescribing penalties; 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 is committed to meeting the needs of a growing population and a healthy economy statewide; to meeting the needs of fish and healthy watersheds statewide; and to advancing these two principles together, in increments over time.

The legislature finds that improved management of the state's water resources, clarifying the authorities, requirements, and timelines for establishing instream flows, providing timely decisions on water transfers, clarifying the authority of water conservancy boards, and enhancing the flexibility of our water management system to meet both environmental and economic goals are important steps to providing a better future for our state.

The need for these improvements is particularly urgent as we are faced with drought conditions. The failure to act now will only increase the potential negative effects on both the economy and the environment, including fisheries resources.

Deliberative action over several legislative sessions and interim periods between sessions will be required to address the long-term goal of improving the responsiveness of the state water code to meet the diverse water needs of the state's citizenry. It is the intent of the legislature to begin this work now by providing tools to enable the state to respond to imminent drought conditions and other immediate problems relating to water resources management. It is also the legislature's intent to lay the groundwork for future legislation for addressing the state's long-term water problems.

Sec. 2. RCW 90.82.040 and 1998 c 247 s 1 are each amended to read as follows:

(1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for three phases of watershed planning:

~~((a))~~ (i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

~~((b))~~ (ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

(B) A planning unit may elect to apply for up to one hundred thousand additional dollars to conduct a detailed assessment of multipurpose water storage opportunities or for studies of specific multipurpose storage projects which opportunities or projects are consistent with and support the other elements of the planning unit's watershed plan developed under this chapter, and

~~((c))~~ (iii) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with RCW 90.82.060 through 90.82.100.

(b) A planning unit may request a different amount for phase two or phase three of watershed planning than is specified in (a) of this subsection, provided that the total amount of funds awarded do not exceed the maximum amount the planning unit is eligible for under (a) of this subsection. The department shall approve such an alternative allocation of funds if the planning unit identifies how the proposed alternative will meet the goals of this chapter and provides a proposed timeline for the completion of planning. However, the up to one hundred thousand additional dollars in funding for instream flow and water quality components and for water storage assessments or studies that a planning unit may apply for under (a)(ii)(A) of this subsection may be used only for those instream flow, water quality, and water storage purposes.

(c) By December 1, 2001, or within one year of initiating phase one of watershed planning, whichever occurs later, the initiating governments for each planning unit must inform the department whether they intend to have the planning unit establish or amend instream flows as part of its planning process. If they elect

to have the planning unit establish or amend instream flows, the planning unit is eligible to receive one hundred thousand dollars for that purpose in accordance with (a)(ii) of this subsection. If the initiating governments for a planning unit elect not to establish or amend instream flows as part of the unit's planning process, the department shall retain one hundred thousand dollars to carry out an assessment to support establishment of instream flows and to establish such flows in accordance with RCW 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use these funds to amend an existing instream flow unless requested to do so by the initiating governments for a planning unit.

(d) In administering funds appropriated for supplemental funding for optional plan components under (a)(ii) of this subsection, the department shall give priority in granting the available funds to proposals for setting or amending instream flows.

(3)(a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:

- (i) The planning unit meets all of the requirements of this chapter;
- (ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and
- (iii) The application and supporting information evidences a readiness to proceed.

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:

(i) Applications from existing planning groups that have been in existence for at least one year;

(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:

- (A) First, multi-WRIA planning; and
- (B) Second, single WRIA planning;

(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:

- (A) First, multi-WRIA planning; and
- (B) Second, single WRIA planning.

(d) The department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose.

NEW SECTION. Sec. 3. A new section is added to chapter 90.82 RCW to read as follows:

By October 1, 2001, the department of ecology shall complete a final nonproject environmental impact statement that evaluates stream flows to meet the alternative goals of maintaining, preserving, or enhancing instream resources and the technically defensible methodologies for determining these stream flows. Planning units and state agencies assessing and setting or amending instream flows must, as a minimum, consider the goals and methodologies addressed in the nonproject environmental impact statement. A planning unit or state agency may assess, set, or amend instream flows in a manner that varies from the final nonproject environmental impact statement if consistent with applicable instream flow laws.

Sec. 4. RCW 90.82.130 and 1998 c 247 s 9 are each amended to read as follows:

(1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial ~~((fifty thousand dollars))~~ **organizing grant** under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date ~~((the))~~ **that funds beyond the initial** funding ~~((was))~~ **are** first ~~((received))~~ **drawn upon** by the planning unit.

(c) If the watershed plan is not approved by the planning unit, the planning unit may submit the components of the plan for which agreement is achieved using the procedure under (a) of this subsection, or the planning unit may terminate the planning process.

(2)(a) The legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

(b) If a proposed watershed plan is not approved, it shall be returned to the planning unit with recommendations for revisions. Approval of such a revised proposal by the planning unit and the counties shall be made in the same manner provided for the original watershed plan. If approval of the revised plan is not achieved, the process shall terminate.

(3) The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, the obligations on state agencies are binding upon adoption of the obligations into rule, and the agencies shall take other actions to fulfill their obligations as soon as possible; or (b) for counties, the obligations are binding on the counties and the counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible.

(4) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either: A fiscal impact; a redeployment of resources; or a change of existing policy.

Sec. 5. RCW 90.03.380 and 1997 c 442 s 801 are each amended to read as follows:

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used; PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person

having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and he made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the

information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by this act, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

Sec. 6. RCW 90.80.005 and 1997 c 441 s 1 are each amended to read as follows:

The legislature finds:

(1) Voluntary water right transfers (~~((between water users))~~) can reallocate water use in a manner that will result in more efficient use of water resources;

(2) Voluntary water right transfers can help alleviate water shortages, save capital outlays, reduce development costs, and provide an incentive for investment in water conservation efforts by water right holders; and

(3) The state should expedite the administrative process for (~~((noncontested))~~) water right transfers (~~((among water right holders, conveying greater operational control to water managers and water right holders))~~) by authorizing the establishment of water conservancy boards.

Sec. 7. RCW 90.80.010 and 1997 c 441 s 2 are each amended to read as follows:

The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Board" means a water conservancy board created under this chapter.

(2) "Commissioner" means a member of a water conservancy board.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Record of decision" means the conclusion reached by a water conservancy board regarding an application for a transfer filed with the board.

(6) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under RCW 90.03.380, 90.03.390, or 90.44.100.

NEW SECTION. Sec. 8. A new section is added to chapter 90.80 RCW to read as follows:

(1) If a county is the only county having lands comprising a water resource inventory area as defined in chapter 173-500 WAC, the county may elect to establish a water conservancy board for the water resource inventory area, rather than for the entire county.

(2) Counties having lands within a water resource inventory area may jointly petition the department for establishment of a water conservancy board for the water resource inventory area. Counties may jointly petition the department to establish boards serving multiple counties or one or more water resource inventory areas. For any of these multicounty options, the counties must reach their joint determination on the decision to file the petition, on the proposed bylaws, and on other matters relating to the establishment and operation of the board in accordance with the provisions of this chapter and chapter 39.34 RCW, the interlocal cooperation act. Each county must meet the requirements of RCW 90.80.020(2). The counties must jointly determine the sufficiency of a petition under RCW 90.80.020(3) and each county legislative authority must hold a hearing in its county.

(3) If establishment of a multicounty water conservancy board under any of the options provided in subsection (2) of this section is approved by the department, the counties must jointly appoint the board commissioners and jointly appoint members to fill vacancies as they occur in accordance with the provisions of this chapter and chapter 39.34 RCW.

(4) A board established for more than one county or for one or more water resource inventory areas has the same powers as other boards established under this chapter. The board has no jurisdiction outside the boundaries of the water resource inventory area or areas or the county or counties, as applicable, for which it has been established, except as provided in this chapter.

(5) The counties establishing a board for a multiple county area must designate a lead county for purposes of providing a single point of contact for communications with the department. The lead county shall forward the information required in RCW 90.80.030(1) for each county.

NEW SECTION. Sec. 9. A new section is added to chapter 90.80 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, a board shall operate on a countywide basis or on an areawide basis in the case of a board with jurisdiction in more than one county or water resource inventory area, and have the following powers, in addition to any other powers granted in this chapter:

(a) Except as provided in subsection (2) of this section, a board may act upon applications for the same kinds of transfers that the department itself is authorized to act upon, including an application to establish a trust water right under chapter 90.38 or 90.42 RCW. A board may not act upon an application for the type of transfer within an irrigation district as described in RCW 90.03.380(3). If a board receives an application for a transfer between two irrigation districts as described

in RCW 90.03.380(2), the board must, before publication of notice of the application, receive the concurrence specified in that section.

(b) A board may act upon an application to transfer a water right claim filed under chapter 90.14 RCW. In acting upon such an application, the board must make a tentative determination as to the validity and extent of the right, if any, embodied in the claim and may only issue a record of decision regarding a transfer of such a claim to the extent it is tentatively determined to be valid. Neither the board's tentative determination, nor the director's acceptance of such a tentative determination, constitutes an adjudication of the right under RCW 90.03.110 through 90.03.240 or 90.44.220, and such a determination does not preclude or prejudice a subsequent challenge to the validity, priority, or quantity of the right in a general adjudication under those sections.

(c) A board may establish a water right transfer information exchange through which all or part of a water right may be listed for sale or lease. The board may also accept and post notices in the exchange from persons interested in acquiring or leasing water rights from willing sellers.

(d) The director shall assign a representative of the department to provide technical assistance to each board. If requested by the board, the representative shall work with the board as it reviews applications for formal acceptance, prepares draft records of decision, and considers other technical or legal factors affecting the board's development of a final record of decision. A board may request and accept additional technical assistance from the department. A board may also request and accept assistance and support from the county government or governments of the county or counties in which it operates.

(2) The jurisdiction of a board shall not apply within the boundaries of a federal Indian reservation or to lands held in trust for an Indian band, tribe, or nation by the federal government.

Sec. 10. RCW 90.80.050 and 1997 c 441 s 6 are each amended to read as follows:

(1) A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority or authorities as applicable for six-year terms. The county legislative authority or authorities shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. The county legislative authority or authorities may appoint two additional commissioners, for a total of five. If the county or counties elect to appoint five commissioners, the initial terms of the additional commissioners shall be for three and five-year terms respectively. All vacancies shall be filled for the unexpired term.

(2) The county legislative authority or authorities shall consider, but ~~((is))~~ are not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. ~~((However,))~~ The county legislative

authority or authorities shall ensure that at least one commissioner is an individual water right holder((s)) who diverts or withdraws water for use within the ((county are represented on)) area served by the board. The county legislative authority or authorities must appoint one person who is not a water right holder. If the county legislative authority or authorities choose not to appoint five commissioners, and as of the effective date of this section there is no commissioner on an existing board who is not a water right holder, the county or counties are not required to appoint a new commissioner until the first vacancy occurs. In making appointments to the board, the county legislative authority or authorities shall choose from among persons who are residents of the county or counties or a county that is contiguous to the county that the water conservancy board is to serve.

(3) No commissioner may participate in a record of decision of a board ((decisions)) until he or she has successfully completed the necessary training required under RCW 90.80.040. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to receiving training.

Sec. 11. RCW 90.80.070 and 1997 c 441 s 9 are each amended to read as follows:

(1) A person proposing a transfer of a water right may elect to file an application with a water conservancy board, if a board has been established for the geographic area where the water is or would be diverted, withdrawn, or used. If the person has already filed an application with the department, the person may request that the department convey the application to the conservancy board with jurisdiction and the department must promptly forward the application. A board is not required to process an application filed with the board. If a board decides that it will not process an application, it must return the application to the applicant and must inform the applicant that the application may be filed with the department. An application((s)) to the board for a transfer((s)) shall be made on a form provided by the department((, and shall contain such)), A board may require an applicant to submit within a reasonable time additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction ((of the transferor's)) that a right to the quantity of water being transferred exists, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The ((transferor and the transferee of)) applicant for any proposed water right transfer may apply to a board for ((approval of the)) a record of decision on a transfer if the water proposed to be transferred is currently diverted, withdrawn, or used within the geographic ((boundaries of the county)) area in which the board has jurisdiction, or would be diverted, withdrawn, or used within the geographic

~~((boundaries of the county)) area in which the board has jurisdiction~~ if the transfer is approved. In the case of a proposed water right transfer in which the water is currently diverted or withdrawn or would be diverted or withdrawn outside the geographic boundaries of the county or the water resource inventory area where the use is proposed to be made, the board shall hold a public hearing in the county of the diversion or withdrawal or proposed diversion or withdrawal. The board shall provide for prominent publication of notice of ~~((such)) the~~ hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application. If an application is for a transfer of water out of the water resource inventory area that is the source of the water, the board shall consult with the department regarding the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application ~~((in accordance with the publication requirements))~~ and send notice to state agencies ~~((as provided in))~~ in accordance with the requirements of RCW 90.03.280. In addition, the board shall send notice of the application to any Indian tribe with reservation lands that would be, but for section 9(2) of this act, within the area in which the board has jurisdiction. The board shall also provide notice of the application to any Indian tribe that has requested that it be notified of applications. Any person may submit comments and other information to the board regarding the application. ~~((Any water right holder claiming detriment or injury to an existing water right may intervene in the application before the board pursuant to subsection (4) of this section. If a majority of the board determines that the application is complete, in accordance with the law and the transfer can be made without injury or detriment to existing water rights in accordance with RCW 90.03.380, the board shall issue the applicant a certificate conditionally approving the transfer, subject to review by the director.~~

~~—(4) If a water right holder claims a proposed transfer will cause an impairment to that right, the water right holder is entitled to a hearing before the board. The board shall receive such evidence as it deems material and necessary to determine the validity of the claim of impairment. If the party claiming the impairment establishes by a preponderance of the evidence that his or her water right will be impaired by the proposed transfer, the board may not approve the transfer unless the applicant and the impaired party agree upon compensation for the impairment:))~~ The comments and information may be submitted in writing or verbally at any public meeting of the board to discuss or decide on the application. The comments must be considered by the board in making its record of decision.

(4) If a majority of the board determines that the application is complete, and that the transfer is in accordance with RCW 90.03.380, 90.03.390, or 90.44.100, the board must issue a record of decision approving the transfer, subject to review by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows. The board

must include in its record of decision any conditions that are deemed necessary for the transfer to qualify for approval under the applicable laws of the state. The basis for the record of decision of the board must be documented in a report of examination. The board's proposed approval must clearly state that the applicant is not permitted to proceed to effect the proposed transfer until a final decision is made by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows.

(5) If a majority of the board determines that the application cannot be approved under the applicable laws of the state of Washington, the board must make a record of decision denying the application together with its report of examination documenting its record of decision. The board's record of decision is subject to review by the director under RCW 90.80.080.

Sec. 12. RCW 90.80.080 and 1997 c 441 s 11 are each amended to read as follows:

(1) ~~((If a transfer is approved by the board;))~~ The board must provide a copy of its record of decision to the applicant. The board shall submit ~~((a copy of the proposed certificate conditionally approving))~~ its record of decision on the transfer application to the department for review. The board shall also submit ~~((a))~~ its report of examination to the department summarizing ~~((any))~~ factual findings on which the board relied in ~~((deciding to approve the proposed transfer))~~ reaching its record of decision and a copy of the files and records upon which the board's record of decision is based. The board shall also promptly transmit notice by mail to any person who objected to the transfer or who requested notice of the board's record of decision.

(2) Upon receipt of a board's record of decision, the department shall promptly post the text of the record of decision transmittal form on the department's internet site. The director shall review each ~~((proposed transfer conditionally approved))~~ record of decision made by a board for compliance with applicable state water ~~((transfer laws including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted by the department, and other applicable))~~ law.

(3) Any party to a transfer ~~((or a)),~~ third party who alleges his or her water right will be impaired by the proposed transfer, or other person may file ~~((objections))~~ a letter of concern or support with the department and the department may consider the concern or support expressed in the letter. ~~((If objections to the transfer are filed with the department, the board shall forward the files and records upon which it based its decision to the department.))~~ Such letters must be received by the department within thirty days of the department's receipt of the board's record of decision.

(4) The director shall review the ~~((action))~~ record of decision of the board and shall affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director ~~((, upon the consent of the parties to the transfer))~~ or at the

request of the board or applicant. If the director fails to act within ((this)) the prescribed time period, the board's ((action is final. Upon approval of a water transfer by the action or nonaction of the director, the conditional certificate issued by the board is final and valid)) record of decision becomes the decision of the department and is appealable as provided by RCW 90.80.090. If the director acts within the prescribed time period, the director's decision to affirm, modify, or reverse is appealable as provided by RCW 90.80.090, and the director's decision to remand is appealable as provided by RCW 90.80.120(2)(b).

Sec. 13. RCW 90.80.090 and 1997 c 441 s 12 are each amended to read as follows:

The decision of the director to approve or deny an action to create a board, or to approve, deny, or modify a water right transfer either by action or ~~((nonaction shall be))~~ inaction is appealable in the same manner as other water right decisions made pursuant to chapters 90.03 and 90.44 RCW.

Sec. 14. RCW 90.80.100 and 1997 c 441 s 13 are each amended to read as follows:

Neither the county ~~((nor))~~ or counties, the department, a conservancy board, or its employees, nor individual conservancy board commissioners shall be subject to any cause of action or claim for damages arising out of records of decisions on transfers ((approved)) made by a board under this chapter.

Sec. 15. RCW 90.80.120 and 1997 c 441 s 16 are each amended to read as follows:

(1) A commissioner of a water conservancy board ~~((who has an ownership interest in a water right subject to an application for approval of a transfer or change by the board, shall not participate in the board's review or decision upon the application))~~ shall not engage in any act which is in conflict with the proper discharge of the official duties of a commissioner. A commissioner is deemed to have a conflict of interest if he or she:

(a) Has an ownership interest in a water right subject to an application for approval before the board;

(b) Receives or has a financial interest in an application submitted to the board or a project, development, or venture related to the approval of the application; or

(c) Solicits, accepts, or seeks anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation involved in the application.

(2) ~~((A commissioner of a water conservancy board who also serves as an employee or upon the governing body of a municipally owned water system, shall not participate in the board's review or decision upon an application for the transfer or change of a water right in which that water system has or is proposed to have an ownership interest.))~~ The department shall return a record of decision to a conservancy board without action where the department determines that any member of a board has violated subsection (1) of this section.

(a) If a person seeking to rely on this section to disqualify a commissioner knows of the basis for disqualification before the time the board issues a record of decision, the person must request the board to have the commissioner recuse himself or herself from further involvement in processing the application, or be barred from later raising that challenge.

(b) If the commissioner does not recuse himself or herself or if the person becomes aware of the basis for disqualification after the board issues a record of decision but within the time period under RCW 90.80.080(3) for filing objections with the department, the person must raise the challenge with the department. If the department determines that the commissioner should be disqualified under this section, the director must remand the record of decision to the board for reconsideration and resubmission of a record of decision. The disqualified commissioner shall not participate in any further board review of the application. The department's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of the department's decision to affirm, modify, or reverse the record of decision after remand.

(c) If the person becomes aware of the basis for disqualification after the time for filing objections with the department, the person may raise the challenge in an appeal of the department's final decision under RCW 90.80.090.

NEW SECTION. Sec. 16. A new section is added to chapter 90.80 RCW to read as follows:

A water conservancy board may be formally dissolved by the county or jointly by the counties as applicable in which it operates by adoption of a resolution of the county legislative authority or authorities. Notice of the dissolution must be provided to the director. The department may petition the county legislative authority of the county or the lead county for a board to request that the board be dissolved for repeated statutory violations or demonstrated inability to perform the functions for which the board was created.

Sec. 17. RCW 90.80.130 and 1997 c 441 s 17 are each amended to read as follows:

Water conservancy board activities are subject to the open public meetings act, chapter 42.30 RCW and to chapter 42.32 RCW. This includes announcing meetings in advance.

NEW SECTION. Sec. 18. A new section is added to chapter 90.80 RCW to read as follows:

(1) A board is subject to the requirements of chapter 42.17 RCW. Each board must establish and maintain records of its proceedings and determinations. While in the possession of the board, all such records must be made available for inspection and copies must be provided to the public on request under the provisions of chapter 42.17 RCW.

(2) Upon the conclusion of its business involving a water right transfer application, a board must promptly send the original copies of all records relating to that application to the department for recordkeeping. A board may keep a copy of the original documents. After the records are transferred to the department, the responsibility for making the records available under chapter 42.17 RCW is transferred to the department.

NEW SECTION. Sec. 19. A new section is added to chapter 90.80 RCW to read as follows:

For purposes of carrying out the official business of a board, a quorum consists of the physical presence of two of the three members of a three-member board or three of the five members of a five-member board. A board may operate with one or two vacant positions as long as it meets the quorum requirement.

Sec. 20. RCW 90.80.140 and 1997 c 441 s 18 are each amended to read as follows:

Nothing in this chapter affects transfers that may be otherwise approved under chapter 90.03 or 90.44 RCW.

Sec. 21. RCW 90.80.150 and 1997 c 441 s 19 are each amended to read as follows:

The department shall report biennially by December 31st of each even-numbered year to the appropriate committees of the legislature on the boards formed or sought to be formed under the authority of this chapter, the transfer applications reviewed and other activities conducted by the boards, and the funding of such boards. Conservancy boards must provide information regarding their activities to the department to assist the department in preparing the report.

NEW SECTION. Sec. 22. It is the intent of the legislature to help preserve the agricultural economy of the state by allowing changes of family farm water permits from agricultural irrigation to other agricultural purposes. Within the urbanizing areas of the state, the legislature recognizes the need to allow water from family farms to be converted to other purposes as the use of the land changes consistent with adopted land use plans. The legislature also intends to allow farmers to benefit from water conservation projects and from temporary leases of their family farm water permits. Water conservation and water leases will also allow farmers to contribute to instream flows and other purposes. However, outside of urbanizing areas, the legislature intends to preserve farmlands by ensuring that the quantity of water needed to grow the crops historically grown remains with the farm. In addition, to help retain family farms within the state, the legislature intends to allow family farms of a large enough size to be economically viable under modern agricultural market conditions.

NEW SECTION. Sec. 23. A new section is added to chapter 90.66 RCW to read as follows:

(1) Transfers of water rights established as family farm permits under this chapter may be approved as authorized under this section and under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as appropriate.

(2) A family farm permit may be transferred:

(a) For use for agricultural irrigation purposes as limited by RCW 90.66.060 (1) and (2);

(b) To any purpose of use that is a beneficial use of water if the transfer is made exclusively under a lease agreement, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2);

(c) To any purpose of use that is a beneficial use of water if the water right is for the use of water at a location that is, at the time the transfer is approved, within the boundaries of an urban growth area designated under chapter 36.70A RCW or, in counties not planning under chapter 36.70A RCW, within a city or town or within areas designated for urban growth in comprehensive plans prepared under chapter 36.70 RCW, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2).

(3) If a portion of the water governed by a water right established under the authority of a family farm permit is made surplus to the beneficial uses exercised under the right through the implementation of practices or technologies, including but not limited to conveyance practices or technologies, that are more water-use efficient than those under which the right was perfected, the right to use the surplus water may be transferred to any purpose of use that is a beneficial use of water. Nothing in this subsection authorizes: A transfer of the portion of a water right that is necessary for the production of crops historically grown under the right; or a transfer of a water right or a portion of a water right that has not been perfected through beneficial use before the transfer. Water right transfers approved under this subsection must be consistent with the provisions of RCW 90.03.380(1).

(4) Before a change in purpose of a family farm water permit to municipal supply purpose or domestic purpose may be authorized, the public water system that is receiving the family farm water permit must be meeting the water conservation requirements of its current water system plan approved by the department of health or its small water system management program.

(5) The place of use for a water right transferred under the authority of this section shall remain within: The water resource inventory area containing the place of use for the water right before the transfer; or the urban growth area or contiguous urban growth areas of the place of use for the water right before the transfer if the urban growth area or contiguous urban growth areas cross boundaries of water resource inventory areas.

(6) The authority granted by this section to transfer or alter the purpose of use of a water right established under the authority of a family farm permit shall not be construed as limiting in any manner the authority granted by RCW 90.03.380, 90.03.390, or 90.44.100 to alter other elements of such a water right.

Sec. 24. RCW 90.66.040 and 1979 c 3 s 4 are each amended to read as follows:

For the purposes of this chapter, the following definitions shall be applicable:

(1) "Family farm" means a geographic area including not more than ~~((two))~~ six thousand acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than ~~((two))~~ six thousand acres of irrigated agricultural lands in the state of Washington which are irrigated under rights acquired after December 8, 1977.

(2) "Person" means any individual, corporation, partnership, limited partnership, organization, or other entity whatsoever, whether public or private. The term "person" shall include as one person all corporate or partnership entities with a common ownership of more than one-half of the assets of each of any number of such entities.

(3) "Controlling interest" means a property interest that can be transferred to another person, the percentage interest so transferred being sufficient to effect a change in control of the landlord's rights and benefits. Ownership of property held in trust shall not be deemed a controlling interest where no part of the trust has been established through expenditure or assignment of assets of the beneficiary of the trust and where the rights of the family farm permit which is a part of the trust cannot be transferred to another by the beneficiary of the trust under terms of the trust. Each trust of a separate donor origin shall be treated as a separate entity and the administration of property under trust shall not represent a controlling interest on the part of the trust officer.

(4) "Department" means the department of ecology of the state of Washington.

(5) "Application", "permit" and "public waters" shall have the meanings attributed to these terms in chapters 90.03 and 90.44 RCW.

(6) "Public water entity" means any public or governmental entity with authority to administer and operate a system to supply water for irrigation of agricultural lands.

(7) "Transfer" means a transfer, change, or amendment to part or all of a water right authorized under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW.

(8) "Withdraw" means to withdraw ground water or to divert surface water.

Sec. 25. RCW 90.66.060 and 1979 c 3 s 6 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, the right to withdraw water for use for the irrigation of agricultural lands under authority of a family farm permit shall have no time limit (~~but~~) and shall be conditioned upon the land being irrigated complying with the definition of a family farm as defined at the time the permit is issued(~~(- PROVIDED, HOWEVER, That)~~).

(2) If the acquisition by any person of land and water rights by gift, devise, bequest, or by way of bona fide satisfaction of a debt, would otherwise cause land

being irrigated pursuant to a family farm permit to lose its status as a family farm, such acquisition shall be deemed to have no effect upon the status of family farm water permits pertaining to land held or acquired by the person acquiring such land and water rights if all lands held or acquired are again in compliance with the definition of a family farm within five years from the date of such acquisition.

~~((2))~~ (3) For family farm permits under this chapter, if the department determines that water is being withdrawn ~~((under a family farm permit))~~ for use on land not in conformity with the definition of a family farm, the department shall notify the holder of such family farm permit by personal service of such fact and the permit shall be suspended two years from the date of receipt of notice unless the person having a controlling interest in said land satisfies the department that such land is again in conformity with the definition of a family farm. The department may, upon a showing of good cause and reasonable effort to attain compliance on the part of the person having the controlling interest in such land, extend the two year period prior to suspension. If conformity is not achieved prior to five years from the date of notice the rights of withdrawal shall be canceled.

NEW SECTION. Sec. 26. A new section is added to chapter 82.16 RCW to read as follows:

(1) The legislature intends to provide an incentive for water distribution businesses to help reduce their customers' use of water through measures such as: Water conservation and outreach programs, distributing shower flow restrictors, toilet tank water displacement devices, and leak detection dye tablets; providing water-efficient fixtures at no cost, giving a rebate for customer-purchased fixtures, or arranging for suppliers to provide fixtures at a reduced price; providing plants for low-water demand landscaping, moisture sensors, flow timers, low-volume sprinklers, and drip irrigation systems; and using conservation pricing and billings that show percentage increase/decrease in water use over the same period from the previous year.

(2) In computing tax under this chapter, there shall be deducted from the gross income seventy-five percent of those amounts expended to improve consumers' efficiency of water use or to otherwise reduce the use of water by the consumer when the expenditures are implementing elements of the conservation plan within a state approved water system plan or a small water system management program. Total deductions taken under this subsection and the resulting tax savings shall be reported to the department of revenue at the time the tax is due.

(3) This chapter does not apply to seventy-five percent of the amounts received for water services supplied by an entity that holds a permit under RCW 90.46.030 when the water supplied is reclaimed water as defined in RCW 90.46.010. Total deductions taken under this subsection and the resulting tax savings shall be reported to the department of revenue at the time the tax is due.

(4)(a) There is created in the state general fund the state water rights trust account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of ecology, in

consultation with the department of fish and wildlife, only to purchase or lease water rights to augment instream flows in streams supporting fish stocks that are listed as threatened or endangered under federal law or listed as depressed or threatened by reason of inadequate stream flows under state law.

(b) The legislature intends that an amount equal to one-third of the total tax savings resulting from this section in each state fiscal year shall be appropriated from the general fund—state to the state water rights trust account. The department of revenue shall calculate the total amount of tax savings reported by water suppliers under this section and shall report this amount to the office of financial management and the appropriate committees of the legislature by October 1st of each calendar year.

(5) This section expires June 30, 2003.

Sec. 27. RCW 90.14.140 and 1998 c 258 s 1 are each amended to read as follows:

(1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

- (a) Drought, or other unavailability of water;
- (b) Active service in the armed forces of the United States during military crisis;
- (c) Nonvoluntary service in the armed forces of the United States;
- (d) The operation of legal proceedings;
- (e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;
- (f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW;

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later;

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW;

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030; ((or))

(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100; or

(g) If such right is a trust water right under chapter 90.38 or 90.42 RCW.

(3) In adding provisions to this section by this act, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

Sec. 28. RCW 90.38.020 and 1989 c 429 s 3 are each amended to read as follows:

(1)(a) The department may acquire water rights, including but not limited to storage rights, by purchase, ~~lease~~, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.

(b) If an aquatic species is listed as threatened or endangered under federal law for a body of water, or is listed as depressed or threatened by reason of inadequate stream flows under state law, and the holder of a right to water from the body of water chooses to donate all or a portion of the person's water right to the trust water system to assist in providing those instream flows on a temporary or permanent basis, the department shall accept the donation on such terms as the person may prescribe as long as the donation satisfies the requirements of subsection (4) of this section and the other applicable requirements of this chapter and the terms prescribed are relevant and material to protecting any interest in the water right retained by the donor. Once accepted, such rights are trust water rights within the conditions prescribed by the donor.

(2) The department may make such other arrangements, including entry into contracts with other persons or entities as appropriate to ensure that trust water rights acquired in accordance with this chapter can be exercised to the fullest possible extent.

(3) The trust water rights may be acquired on a temporary or permanent basis.

(4) A water right donated under subsection (1)(b) of this section shall not exceed the extent to which the water right was exercised during the five years before the donation nor may the total of any portion of the water right remaining with the donor plus the donated portion of the water right exceed the extent to which the water right was exercised during the five years before the donation. A water right holder who believes his or her water right has been impaired by a trust water right donated under subsection (1)(b) of this section may request that the

department review the impairment claim. If the department determines that exercising the trust water right resulting from the donation or exercising a portion of that trust water right donated under subsection (1)(b) of this section is impairing existing water rights in violation of RCW 90.38.902, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not alter a trust water right donated under subsection (1)(b) of this section is appealable to the pollution control hearings board under RCW 43.21B.230. A donated water right's status as a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(5) Any water right conveyed to the trust water right system as a gift that is expressly conditioned to limit its use to instream purposes shall be managed by the department for public purposes to ensure that it qualifies as a gift that is deductible for federal income taxation purposes for the person or entity conveying the water right.

(6) If the department acquires a trust water right by lease in an area in which a drought order has been issued under RCW 43.83B.405 and is in effect at the time the department leases the water right, the amount of the trust water right shall not exceed the extent to which the water right was exercised during the five years before the acquisition was made nor may the total of any portion of the water right remaining with the original water right holder plus the portion of the water right leased by the department exceed the extent to which the water right was exercised during the five years before the acquisition. A water right holder who believes his or her water right has been impaired by a trust water right leased under this subsection may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the leasing or exercising a portion of that trust water right leased under this subsection is impairing existing water rights in violation of RCW 90.38.902, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right leased under this subsection is appealable to the pollution control hearings board under RCW 43.21B.230. The department's leasing of a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(7) For a water right donated to or acquired by the trust water rights program on a temporary basis, the full quantity of water diverted or withdrawn to exercise the right before the donation or acquisition shall be placed in the trust water rights program and shall revert to the donor or person from whom it was acquired when the trust period ends.

Sec. 29. RCW 90.38.040 and 1994 c 264 s 90 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows (~~and/or~~), irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

Sec. 30. RCW 90.42.040 and 1993 c 98 s 3 are each amended to read as follows:

(1) All trust water rights acquired by the state shall be placed in the state trust water rights program to be managed by the department. Trust water rights acquired by the state shall be held or authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas, or to resolve critical water supply problems. To the extent practicable and subject to legislative appropriation, trust water rights

acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(2) The department shall issue a water right certificate in the name of the state of Washington for each permanent trust water right conveyed to the state indicating the reach or reaches of the stream, the quantity, and the use or uses to which it may be applied. A superseding certificate shall be issued that specifies the amount of water the water right holder would continue to be entitled to as a result of the water conservation project. The superseding certificate shall retain the same priority date as the original right. For nonpermanent conveyances, the department shall issue certificates or such other instruments as are necessary to reflect the changes in purpose or place of use or point of diversion or withdrawal. ~~((Water rights for which such nonpermanent conveyances are arranged shall not be subject to relinquishment for nonuse.))~~

(3) A trust water right retains the same priority date as the water right from which it originated, but as between them the trust right shall be deemed to be inferior in priority unless otherwise specified by an agreement between the state and the party holding the original right.

(4) Exercise of a trust water right may be authorized only if the department first determines that neither water rights existing at the time the trust water right is established, nor the public interest will be impaired. If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.

(5) Before any trust water right is created or modified, the department shall, at a minimum, require that a notice be published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks. At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

(6) RCW 90.14.140 through 90.14.230 have no applicability to trust water rights held by the department under this chapter or exercised under this section.

(7) RCW 90.03.380 has no applicability to trust water rights acquired by the state through the funding of water conservation projects.

(8) Subsections (4) and (5) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.42.080(1)(b) or to a trust water right leased under RCW 90.42.080(8) if the period of the lease does not exceed five years. However, the department shall provide the notice described in subsection (5) of this section the first time the trust water right resulting from the donation is exercised.

Sec. 31. RCW 90.42.080 and 1993 c 98 s 4 are each amended to read as follows:

(1)(a) The state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.

(b) If an aquatic species is listed as threatened or endangered under federal law for a body of water, or is listed as depressed or threatened by reason of inadequate stream flow under state law, and the holder of a right to water from the body of water chooses to donate all or a portion of the person's water right to the trust water system to assist in providing those instream flows on a temporary or permanent basis, the department shall accept the donation on such terms as the person may prescribe as long as the donation satisfies the requirements of subsection (4) of this section and the other applicable requirements of this chapter and the terms prescribed are relevant and material to protecting any interest in the water right retained by the donor. Once accepted, such rights are trust water rights within the conditions prescribed by the donor.

(2) The department may enter into leases, contracts, or such other arrangements with other persons or entities as appropriate, to ensure that trust water rights acquired in accordance with this chapter may be exercised to the fullest possible extent.

(3) Trust water rights may be acquired by the state on a temporary or permanent basis.

(4) A water right donated under subsection (1)(b) of this section shall not exceed the extent to which the water right was exercised during the five years before the donation nor may the total of any portion of the water right remaining with the donor plus the donated portion of the water right exceed the extent to which the water right was exercised during the five years before the donation. A water right holder who believes his or her water right has been impaired by a trust water right donated under subsection (1)(b) of this section may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the donation or exercising a portion of that trust water right donated under subsection (1)(b) of this section is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right donated under subsection (1)(b) of this section is appealable to the pollution control hearings board under RCW 43.21B.230. A donated water right's status as a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to donations for instream flows described in subsection (1)(b) of this section, but do apply to other transfers of water rights under this section.

~~((5))~~ (6) No funds may be expended for the purchase of water rights by the state pursuant to this section unless specifically appropriated for this purpose by the legislature.

(7) Any water right conveyed to the trust water right system as a gift that is expressly conditioned to limit its use to instream purposes shall be managed by the department for public purposes to ensure that it qualifies as a gift that is deductible for federal income taxation purposes for the person or entity conveying the water right.

(8) If the department acquires a trust water right by lease in an area in which a drought order has been issued under RCW 43.83B.405 and is in effect at the time the department leases the water right, the amount of the trust water right shall not exceed the extent to which the water right was exercised during the five years before the acquisition was made nor may the total of any portion of the water right remaining with the original water right holder plus the portion of the water right leased by the department exceed the extent to which the water right was exercised during the five years before the acquisition. A water right holder who believes his or her water right has been impaired by a trust water right leased under this subsection may request that the department review the impairment claim. If the department determines that exercising the trust water right resulting from the leasing or exercising a portion of that trust water right leased under this subsection is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right leased under this subsection is appealable to the pollution control hearings board under RCW 43.21B.230. The department's leasing of a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(9) For a water right donated to or acquired by the trust water rights program on a temporary basis, the full quantity of water diverted or withdrawn to exercise the right before the donation or acquisition shall be placed in the trust water rights program and shall revert to the donor or person from whom it was acquired when the trust period ends.

NEW SECTION. Sec. 32. (1) By December 31, 2004, the department of ecology must report to the appropriate legislative committees the pertinent experience acquired in implementing the various components of this act that are under its jurisdiction.

(2) Beginning December 31, 2001, and ending on December 31, 2004, the department of ecology shall report to the legislature by January 1st of each year on the results of processing applications under RCW 90.03.380(5) and processing applications through water conservancy boards under chapter 90.80 RCW. In the report due on December 31, 2004, the department of ecology shall provide an evaluation and make recommendations regarding modification of any of the provisions of RCW 90.03.380(5).

(3) By October 1, 2001, the office of financial management must complete an assessment of watershed planning, including evaluation of the performance of both watershed planning units and state agencies involved in watershed planning. The office's assessment must address the progress of planning units toward completion of watershed plans and the use of funds provided by the state of Washington to planning units and state agencies for developing those plans. The assessment must include an assessment of the progress of planning units and the department of ecology in setting instream flows. The office must report the results of the assessment to the appropriate committees of the legislature, and the governor.

(4) Beginning December 31, 2001, and ending on December 31, 2004, the office of financial management shall review and report to the legislature by January 1st of each year on whether the department of ecology has adequate funding for fulfilling the department's responsibilities for processing applications through water conservancy boards under chapter 90.80 RCW.

(5) The office of financial management, in consultation with the departments of revenue, health, and ecology, must evaluate the long-term revenue impacts and the costs and benefits of the deductions and exclusions authorized by section 26 of this act. The office of financial management must also evaluate the costs and benefits and revenue impacts of other potential water conservation tax incentives, including but not limited to those that may involve the sales, use, property, utility, and business and occupations taxes. The office of financial management must report its findings regarding tax incentives by December 31, 2001, to the legislature's standing committees with jurisdiction over water resources and the legislative fiscal committees.

(6) The office of financial management, in consultation with the departments of health and ecology, must evaluate the level of water savings occurring from water suppliers' use of the tax incentive provisions in section 26 of this act and must report its findings to the legislature by December 31, 2002.

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

NEW SECTION. Sec. 34. 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 11, 2001.

Passed the Senate April 17, 2001.

Approved by the Governor May 10, 2001.

Filed in Office of Secretary of State May 10, 2001.
